

SALES TAX ACTS & ALLIED LAWS

BEING :
SECOND VOLUME OF ENCYCLOPAEDIA OF
ALL INDIA SALES TAX ACTS

BY
M. G. JAIN B. A. (Com.)
INCOME TAX & SALES TAX CONSULTANT
Author of :
Encyclopaedia of All India Sales Tax Acts, 1951-52
Digest of All India Sales Tax Cases

1953

Publishers :
LAW BOOK HOUSE.
2646, Ballimaran, DELHI.

Price Rs. 15/- only.

25.2.58.

498



SALES TAX ACTS & ALLIED LAWS

**BEING :
SECOND VOLUME OF ENCYCLOPAEDIA OF
ALL INDIA SALES TAX ACTS**

BY
M. G. JAIN B. A. (Com.)
INCOME TAX & SALES TAX CONSULTANT
Author of :
Encyclopaedia of All India Sales Tax Acts, 1951-52
Digest of All India Sales Tax Cases

1953

Publishers :
LAW BOOK HOUSE,
2646, Ballimaran, DELHI.

Price Rs. 15/- only.

ALL RIGHTS RESERVED

Published by
Law Book House DELHI.

PREFACE

The publication contains complete law and procedure of Sales-tax in India with commentary in the light of Sales-tax cases decided so far. The relevant provisions of allied laws of Sales-tax from Civil and Criminal Procedure Codes, Laws of Limitation, Sales of Goods Act, Contract Act, Transfer of Property Act, Income Tax Act, Evidence Act, Constitution of India and other more acts have been selected and given at appropriate places in book. It is an important publication to be kept for ready reference to avoid harrassment, penalties and prosecutions particularly these hard days when law of sales tax is very strict.

Author is confident that this book will fulfil long felt need of all those who have to deal with Sales-tax matters.

Suggestions from the readers will always be welcome.

DELHI.

February 5, 1953

M. G. Jain,
Tax Consultant.

CONTENTS

| | Page |
|--|---------|
| 1. Introduction | ... 1 |
| 2. Definitions | ... 11 |
| 3. The Indian Sale of goods Act, 1930 | ... 21 |
| 4. Contract | ... 37 |
| 5. Sales Tax Procedure | ... 65 |
| —Liability to pay tax | |
| —Duties of a dealer | |
| —Gross and net and Taxable turnover | |
| —Single point taxation | |
| —Incidence of taxation | |
| —Registration | |
| —Returns and payment of tax | |
| —Assessment of taxes | |
| 6. Powers of Tax Officers | ... 111 |
| 7. Accounts and Inspection | ... 113 |
| 8. Exemptions | ... 115 |
| 9. Penalties and Prosecutions | ... 119 |
| 10. Composition of offences | ... 123 |
| 11. Issue of writs | ... 125 |
| 12. Power of Sales-tax Authority to take evidence on oath etc. | ... 127 |
| 13. Returns Privileged Documents | ... 143 |
| 14. Miscellaneous Provisions | ... 145 |
| 15. Appeals, Revision & Reference | ... 147 |
| 16. Rules | ... 156 |
| 17. Subject Index (In detail) | ... 159 |

INTRODUCTION

It is during the first German War that Sales-tax was made apart of fiscal legislation to over come the financial stringency which Germany had to confront and levy made a happy contribution to the revenues to that State, so much so that it was made a permanent measure in the year 1918. The experiment was tried in other countries as well and proved successful and now it forms an element of stability in national finance and is adopted as a permanent measure. It was England which tried to work it out scientifically and the Pakistan Government has made it part of Federal Legislation.

Sales-tax is not a new experiment its origin dates back to the reign of Augustus who introduced it in Rome. In Spain and in the Kingdom of Nepal some such taxes were imposed in the fifteenth century.

In India levy of Sales-tax was had in Travancore State during the English rule and it was on passing of the Government of India Act 1935 that Sales-tax was levied by Madras Government in the year 1939.

The Government of India Act had incorporated in Schedule two lists—one federal legislative list and another provincial legislative list. Taxes on the sale of goods and on advertisements were included in the provincial list.

When the Congress party took the reigns of the provincial Governments, the Congress Government in Madras tried the experiment of stabilizing its finances by raising a Sales-tax.

Many legal questions arose and it was contended on behalf of the Central Government that the levy of Sales-tax was *ultra vires* the power of legislature and in case *Governor General in Council, v. the Province of Madras* 1 S. T. C. 35, the Federal Court gave its judgment on the constitutional issue and the judgment was confirmed by the Privy Council and held that the Madras Sales-tax is *intra-vires* the provincial legislature even in so far it levies a tax on first sales in Madras of goods manufactured and produced in India.

By and by others States in India adopted this measure to meet the growing need of the popular Government and in featuring out as a permanent measure now.

But Sales-tax Act enforced in various States of Indian Union have been framed with special considerations about the conditions obtaining in particular States, and so we find that in some States it is worked out as a single point taxation, in other as a multiple taxation and in the rest as composite type. In certain States Government is included in the definition of dealer in other it is put outside the operation of the Act. But with all this the general scheme and the machinery to work it out and the safe guard for evasion of tax are almost identical and so the general scheme will be discussed in this introduction.

Sales-tax is a tax on the sales of commodities. It is an indirect tax as the Government does not collect it from the purchasers who have to pay it. But in reality it is direct tax and the tax is charged from the purchasers at the time of the sale. The seller is a mere intermediary so to speak and has

to collect the tax and pay it to the Government. It is a fact that he is made liable to pay the tax but he is not to pay it from his profits but has to charge it from the purchasers who have to bear the burden. It is for this reason that the appropriate word is direct tax as it touches the pocket of the purchasers i. e., the public directly.

Sales-tax is chargeable even on goods which are subject to exercise duty such as country liquor drugs, foreign liquors etc. It is fact that the dealers in such goods raised a voice that they are subjected to double taxation in case such goods are made chargeable to Sales-tax and the Central Government feels that it is an encroachment of their powers. But it has been held in the matter of *C. P. & Berar Sales of Motor Spirits and Lubricants Taxation Act, 1938* that excise duty is to be imposed upon the manufacturer or producer of the excisable articles, or at least at the stage of or in connection with manufacture or production and that it extends no further whereas the Sales-tax is to be imposed on sale thereafter. Or in otherwords excise duty is leviable at the stage of manufacture or production of the goods where as Sales-tax is leviable when the goods have become part of the common stock of the Station.

This proposition of law resolved the great tangle regarding the powers of the Central and Provincial Legislatures under the Government of India Act, 1935 and settled once for all the questions as to the extent of their powers.

Disputes are sure to arise under every Federal Constitution regarding the Central State Legislative spheres and the proposition of law which has put an end to a long standing dispute about the legislative powers of the Central & State Governments will help in obtaining difficulties in future and silencing in criticism of the dealers who feel so to speak aggrieved by being made to pay double duty on the same commodity one in the shape of excise duty and another in the form of Sales-tax.

As the Sales-tax Law is of recent growth and there is dearth of judicial pronouncements on different point arising there from, it is thought advisable in such a state of affairs to take into considerations ruling given in connection with Income-tax Law on identical provisions. In case *Raghubar Mandal Harihar Mandal v. The State of Bihar*, the analogous provisions of the Income-tax Act were considered and rulings on the point were referred for the sake of guidance. It was remarked "Section 10 (2) (b) of the Bihar Sales-tax Act is analogous to Section 23 (3) of the Indian Income-tax Act and in substance there is no difference between an assessment under Section 23 (3) & 23 (4) of the Income-tax Act and so on the same principle there is no difference between an assessment under Section 10 (2) (b) and 10 (4) of the Sales-tax Act."

Sales-tax being a tax on sales, the definition of sales under the various Acts is to be studied to know exactly as to when the liability to tax on a sale arises. The definitions given in the Sales-tax Acts are much wider in scope and amplitude than that given in the sale of goods Act and the important distinction between the ingredients given in the Sales of Goods Act and those given in the Sales-tax Acts is that under the former money consideration is essential but in the latter case consideration may be in money or otherwise. It was held in *A.I.R. 1949 Madras 95* that when silver is received as equivalent weight of a finished silver article from the customer, the transaction amounts to sale and not a barter.

The important ingredients to constitute sale under the Sales Tax Acts of different States are that (i) transfer of property in goods should take place

and (2) the transfer must take place in the course of trade or business. Where an order was placed for the goods and no delivery was given or taken and there was nothing to show that the goods were actually transferred from the seller to the buyer, it was held that in such circumstances it could not be said that sale had taken place. *Puran Chand v. The State* (1951) 2 S.T.C. 14. Where under a contract for sales, the property in the goods is transferred from the seller to the buyer it amounts to sale. State Legislatures have made sales executed outside the state taxable in respects of goods produced or manufactured in the State or when goods happen to be in the State even if the contracts of sale is entered into in respect of any such goods outside the State.

Here the Sales Tax is levied in respect of sales made outside the State on account of the fact that the goods were manufactured or produced in the State or the goods happen to be in the State when the contract of sale is made. Such a legislature of an element of extra territoriality on the part of State legislatures and it was doubted whether such powers were within the competence of such legislatures. In *Gobind Ram Lakhman Prasad v. State of Madhya Pradesh* 1951 N.L.J. 503 (Rev) that in introducing an extra-territoriality of this kind, the provincial legislature did not exceed its jurisdiction in enacting a taxing statute.

But article 286 of the constitution does not allow Sales-tax to be levied on sales (i) that take place outside the State (2) in the course of import of goods into export goods out of, the territories of India (3) in the course of inter-State trade or Commerce, subject to the two exemptions that the president may, where tax was being imposed on such sales before 26th January, 1950, permit continuance of such tax upto 31st March, 1951 or the Parliament may permit the States to levy a tax on such sales.

Taxation Scheme in general.—In all the States the taxation scheme is that dealers are made to pay tax on their turnover i. e., aggregate of sale proceed for a prescribed period. Here there must be sale first which means transfer of goods for money or other consideration and goods means all kinds of movable property other than newspaper, actionable claims, stocks, shares, securities. The definitions of "dealers" "sale" "goods" "turnover" "net and gross turnover" are given to fix the liability and calendate the taxable turnover. In certain States, Commission Agents are required to take out licenses if they want that they should not be charged as dealers. Tax is levied as single point, multiple point or composite of both types. Single point means that the tax is to be levied only once and is the tax generally paid by importers and manufacturers but in such a case the rate is higher and multiple means all the series of sales in respect of that particular commodity. The list of commodities which are to be taxed at the single point are given in the Act as the rule is to tax the sales in respect of a commodity as many times as there will take place transfer of goods for money or other consideration. Then in view of the conditions of the particular State and other consideration, certain commodities, though goods, yet their sale are to be excluded from the turnover and then exemptions are made in respect of certain goods and rebates are allowed to some persons. Exemptions are of two kinds—absolute and qualified. In the case of absolute exemptions no tax is to be paid and in case of qualified exemptions, exemptions can only be granted if they take out exemption certificates or fulfil some such other conditions. There are allowed deductions too at the determination of net turnover. The deductions and exemptions are allowed under all the Acts.

Machinery to work out the Scheme.—Every State has set up a Sales-tax department for the purpose of administration to fix up the liability and recover

the tax from the dealers. The head of this department is called Sales-tax Commissioner assisted by Deputy Commissioner, Assistant Commissioners, Sales-tax Officers and Assistant Sales-tax Officers who are all assigned duties and powers by the respective State Governments. But in certain State Commissioner is called the Collector of Sales-tax. But the fact remains that apart from the differences in designations the officers of the department are entrusted with the work of administration and they are made responsible for the due discharge of their duties. Generally the assessing authorities are the Sales-tax Officers but the heads of the department are given concurrent jurisdiction in some States. There may be difference in minor details but the administration machinery is of the same type.

Registration of dealers.—To fix up the liability on a dealer for the collection of tax from the purchasers all the States have introduced the system of registration and the dealers. In order to guard against any kind of mischief to be played by them in collecting the tax from their purchasers they are required to follow prescribed rules with regard to the issue of cash memos, ect. Procedure is laid down for filing application for registration, renewal and also for their cancellation.

Return and Accounts.—In order to determine the turnover and the tax every dealer whose gross turnover exceeds the taxable quantum is required to maintain accounts according to the rules prescribed and submit returns at the end of such periods as may be prescribed in the form prescribed. But the forms and periods vary with different States. Return are to be submitted yearly and where option is given to a dealer to furnish the return by the date when his accounting year ends, he is required to file quarterly returns but such option is given in some States only. Generally the return is to be made for the previous year ending 31st of March. The dealers and licensees are required to keep a true and correct account and in such accounts they have to show separately the sales and purchase of such goods also as are exempt from tax under the Act or per which different rates are prescribed. Sales and purchases must be supported by bills and vouchers bearing serial number. Periods are prescribed under the Acts of various States for which the accounts are to be preserved. Rules prescribed under the certain acts the documents and the record which will be taken to be satisfactory evidence to support a claim but strict insistence on the rules in excluding other evidence was held not to be warranted by the Act. *Ram Pratap Camalia Fatwa v. Province of Bihar* 1 S.T.C. 48.

Best judgment assessments.—In case the assessing authority is satisfied about the correctness of the return, assessment shall be made on it but if the formalities about the submission of returns are not fulfilled or fails to make a return or to support it by evidence or the correctness of the return is doubtful, an assessment shall be made to the best of the judgment. These provisions work as sanctions for keeping correct record and filing returns in time and supporting the return by satisfactory evidence. The best judgment assessment is to be made after due notice otherwise it is to work injustice. In the Income-tax Law there are copious rulings bearing on this point and the principal enunciated therein is applicable in Sales-tax cases as well. Provision is made in all the Sales-tax Act for supplementary assessment in case assessment has not been made or some portion of the turnover has escaped assessment.

Other Sanctions.—Other sanctions by way of penalties are provided in all the Acts and manipulation of false accounts are seriously dealt with. Certain Acts or omissions are made offences for purposes of Sales-tax Act. Some

states have made the offences cognizable and some non-cognisable and some have made the offences triable by Magistrate. Lighter offences are punishable lightly and graver ones have been made punishable with imprisonment. But the purpose behind all the penal provisions is to enforce payment of tax and due compliance with the directions of administrative machinery as well as with the rules of the law. On account of this fact all the offences are made compoundable but the general principle is to be kept in view by the taxing authorities that it is not fair on the part of those authorities to try to realise the money by threat of prosecutions more than what they can realise otherwise. The principle was enunciated in *Ganga Sagar v. Emperor*, a case under Income-tax Act reported as 4 I.T.C. 97.

Under all the Acts sanction is necessary for compounding offences under the sales tax Act, because the legislature has thought it advisable to put the matter in discretion of the superior officer of the administrative machinery.

Even maximum composition sums have been prescribed under different Acts and the authority competent to compound has to abide by such maximum prescribed which vary with different States.

Security to the assessee.—In the interests of realisation of taxes and to encourage persons to put all the relevant facts before the department without any fear that the third parties may not take advantage of it and use these facts as against them, all the States have made provision in the Act to make the returns and statements made before the sales department confidential. Certified copies of such documents are not admissible in evidence nor can a Court of law order the production of such documents.

Remedies open to the assessee.—The Legislatures of different States have strengthened the administrative machinery to fix liabilities, calculate the amount of tax and recover it and provided sanctions in case the dealers made an attempt at evasion of tax and made the rules stringent with regard to observance of formalities complying with the notices, it provides reliefs to the dealers in case they thought themselves in any way aggrieved and valuable right of appeal has been given to them. They can move the revisional authority as well and refer a matter to the High Court if any point of law was involved in the case.

But there is no uniformity about appealable orders among the different States. Some States have been so liberal that almost every order is made appealable but some have been stricter according to the conditions obtaining in that State and have made assessment and penalty orders only appealable but the right of appeal has been conferred on a dealer and has not been denied to him. The right of appeal is there whether he has contested his liability to tax before the Sales-tax authorities or not, but there are certain conditions to be satisfied before the appeal is entertained. The appeal cannot be entertained unless the amount of tax and penalty is paid before filing of the appeal. But some States have made the payment of the whole amount of tax as condition precedent and some have made the payment of admitted tax only.

Further it is provided that in case the appellate authority contemplates to enhance the tax, it must give a reasonable opportunity to the appellant of showing cause against such assessment.

Over and above this the Sales-tax Acts of various States have not provided that an appeal can be dismissed for default and the appellate authority has to decide the appeal on merits even if the appellant fails to appear on the date fixed for hearing the appeal, but no right of appeal has been conferred

on the Sales-tax Department. The Income-tax Department can however seek remedy by way of revision but the revising authority cannot enhance the tax on the ground that some portion has escaped assessment. He can in such a case either himself proceed under section 34 of the Act or direct the assessing authority to proceed under that section.

In case any order prejudicial to the assessee is to be passed in revision the revisional authority is bound to give a reasonable opportunity to the assessee to be heard. There are conflicting rulings of the High Courts of various States on the question whether the dismissal of a petition for revision is an order prejudicial to the assessee. It has been held in case *Ishwer Das Kapoor & Sons v. Member of Board of Revenue, Bengal*. 1 S. T. C. 153 that under section 20 of the Bengal Finance Sales Tax Act of 1941, the Board of Revenue can not reject a revision petition without giving the petitioner an opportunity to be heard as dismissal of revision petition is an order which adversely affect the petitioner but in *Bhagwan Dass v. Province of Bihar*. 1 S. T. C. 234, it has been held that the dismissal of a revision petition is not an order which adversely effects the parties and opportunity of being heard need not be given.

But inspite of this conflict about the point whether dismissal of revision petition is an order which adversely affects the petitioner, it is an established proposition of law that the petitioner has the right to require the revising authority to make a reference to the High Court on any question of law arising out of such an order in case it affect his liability to pay tax.

The provisions for revision are different under different Acts. In Bombay State, it is the Commissioner who exercises powers of revision against orders original or appellate, passed by subordinate officers and the Tribunal exercises the powers of final revision. In Madras State, the revising authority is the Board of Revenue and in U. P. revising authority is a person qualified under clause (2) of article 217 of the Constitution, per appointment as judge of a High Court appointed by the Government to act as such. In Bihar final revision is heard by the Board of Revenue. Certain Acts have provided a relief by way of revision in cases of assessment without jurisdiction and others are silent about it and under these Acts, the assessee can get relief either under article 226 of the constitution or by civil suit. Questions whether certain provisions of law are *ultra vires* can be entertained in revision under the Central Provinces and Berar Sales Tax Act, 1947. Provincial Legislature *Gobind Ram Laxan Prasad v. The State of Madhya Bharat*. 2. S. T. C. 176, relief is available to assessee under article 226 of the Constitution in case of assessments made without jurisdiction but in case *Kutta Adinarayana & Bros v. The State of Madras* () it was held an application for *certiorari* under article 226 of the Constitution of India was not maintainable as other effective remedies by way of filing a civil suit were available to the assessee as Madras General Sales Tax Act of 1930 with its subsequent amendments has not ousted the jurisdiction of ordinary civil courts when a party is alleged to have been aggrieved by the administration of the Act and that suit alleging the Sales-tax was illegally levied or excessive amount were collected as Sales-tax are maintainable. It was held in *Maryata Venkateshara Rao in re* 1951 Mad W. N. 837 that the statute must by express provision or by necessary implication exclude the jurisdiction of Civil Courts and in the absence of such provision ordinary law of the land cannot be departed and as the wording of the Sales tax Act of Madras Section 18 is couched in negative form which does not expressly or by necessary implication oust the jurisdiction of the

Civil Courts and so a suit is maintainable on the part of a party aggrieved by the administration of the Act. In *Piarelal and other* () it has been held that relief against illegal assessment can effectively be heard in appeal.

Other provision for the working.—Certain powers are given and certain safeguards provided for Income of tax authorities to contribute to the effective working of the administration.

In all the Sales-tax Acts there are provisions where under the Sales-tax Officers are empowered to inspect dealer's shops and check their account and compel the production of the accounts as well. Provision exist for carrying out the search of the premises. Such extensive powers are apt to be abused by the Sales-tax authorities and used to harass the dealers.

In a recent case the Madras High Court in *Maryala Venketeswara Rao in re supra* has laid down a sound proposition of law as to the extent of the exercise of such powers and when it amounts to an abuse that the dealers feel a sense of security from abuse of such powers on the part of Sales-tax authorities. It is laid down that the inspection of a dealer's shop on a holiday or during lunch hour is illegal and the Sales-tax authorities have no power to order production of cash and private papers and they cannot write out incriminatory statements which a dealer is alleged to have made and get those statements signed by him and it has been held that it is no offence to ask the Commercial Tax Officer to clear out of the shop with an implied threat of being pushed out when he carried illegal inspection. [1951 Mad. W. N. 837.]

All the Sales-tax Acts have barred the suits challenging the legality of assessments and an assessee cannot file a declaratory suit that he is not a dealer when notice is served on him by the department to get himself registered. *Raja Vishweshwer v. the Province of Bihar*. 2 S. T. C. 129. Further the officers who are to be entrusted with the administration are granted personal immunity under all the Acts of various States for anything done by them in good faith during the discharge of their duties.

Exemptions, Deductions and Reductions.—The policy of all the States levying Sales-tax is to exempt goods of every day use and those which are essential for the life of the community. Article 286 of the Constitution of India runs as :—

"No law made by the Legislature of a State imposing or authorising the imposition of a tax on the sale or purchase of goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent".

Exemptions are given either in the Act itself or in the Schedules. Besides the State Governments are empowered to make exemptions and reduction in rates in respect of any tax payable (1) on the sale of any specified class of goods at all points or at a specified point or points in the series of sales by successive dealers (2) by any specified class of persons, in regard to the whole or any part of their turnover.

Under article 246 (3), Schedule VII, list 11, item 45, the State Government have power to impose taxes on the sale or purchase of goods other than newspapers. The sale of newspapers is exempted from the operation of Sales-tax Acts of the States. But sale of old newspapers as wastepaper is taxable. Certain religious books have also been exempted from tax. Some exemptions are provided to protect and promote minor trades, small scale, cottage industries, literacy, culture and education.

When exemptions are granted to any specified class of persons, they must first fulfil the conditions on which these are granted and it is then and then alone that they can receive the benefit of the exemptions.

Rebate is allowed in respect of manufactured goods and in forward contracts certain percentages upto prescribed maximum are permitted to be deducted from the amounts payable as valuable consideration for carrying out a contract. Reduction is allowed at a certain percentage in respect of bullion trade in some states and exemption granted to them in other States is taxable at certain rates. Besides agricultural implements are also exempted from the tax as well as sale of goods to foreign abassadors. Certain States on grounds of policy have exempted certain other sales also which are to be deducted from the gross turnover at the time of calculation of the taxable turnover.

Recovery of tax.—All the Sales-tax Acts contain a provision that the arrears of Sales-tax shall be recovered as arrears of land revenue.

Government empowered to make rules.—All the Sales-tax Acts contain a provision under which the State Governments are empowered to make rules to give effect to the provisions of the Act and the points are specifically mentioned in respect of which power to make rules is conferred. But rules should be consistent with the Act and if those conflict with any provisions of the Act these cannot be given effect to. It was held in *Ram Pratab Kamalia* at rule 36 framed under Bihar Sales Tax Act is not in conflict with Section 26 of that Act merely because the rule prescribes what record the dealer has to maintain and produce in evidence to support a certain claim as it does not preclude the other evidence to prove the claim. But if such record is not maintained in a particular respect in strict accordance with the rule that fact alone should not be taken as sufficient ground for excluding it from evidence, considering that the whole Sales-tax business is yet new and assesses are not quite familiar with all its technicalities even though ignorance of law is not excuse *Brijraj Bidasaria v. The Province of Bihar*. Where there is conflict between the rule and the provision of the Act, the provision of the Act must prevail. 21 Lah L. T. 41.

Extent of Powers of State Legislatures.—Tax imposed by the State Legislature on all passengers carried by motor cabs, State carriers contract carriages and the tax imposed on all goods transported by public carriers at the rate of two annas in the rupee on all fares and freights payable to the owners of such motor cabs, stage carriages, contract carriages or public carriers is within its powers as such tax is covered by entry No. 56 of list II of VII schedule, Constitution of India when the charging section clearly provides that the tax is upon the passengers and goods and not upon the income of the owners and the fares and freights realisable by them.

The fact that the tax is to be measured in proportion to the fares and freights realised does not alter the nature of the tax or affect its intrinsic character which is actually a tax upon the goods and passengers carried by motor vehicles.

State Legislatures are entitled to impose burdens on citizens in the interests of the public and where the Legislatures has to levy taxes for the purposes of State revenue and has to collect these taxes through the most convenient and efficient channels, and in doing so the State is justified in imposing obligations on the citizens concerned to assist in the collection of taxes as the Legislature having the power to authorise a tax must *a fortiori* possess also the

power to prescribe the means by which the tax shall be collected and to designate the officer so that it shall be enforced. The obligation imposed on the owners of motor vehicles to collect taxes is within the competence of the State Legislature.

The State Legislature cannot delegate legislative powers to the State Government but it can leave the appointment of prescribed authority in the hands of the State Government and it does not amount to delegation of legislative functions to executive hands. *Atma Ram Budhia and others v. The State of Bihar* 1952 S. T. C. Suppl 1. Under entry 48, list 11, schedule VII, Govt., of India Act 1935, Provincial Legislature could not impose tax on agreement to sell and forward contract are mere agreements of sale and so cannot be assessed to Sale-tax by virtue of explanation III to Section 2(2) of the U. P. Sales-tax Act, 1948 which is *ultra vires* the powers of State Legislature *Budh Prakash Jai Prakash v. Sales-tax Officer Kanpur* 1952 S. T. C. 185.



DEFINITIONS

Dealer.—'Dealer' is a person who carries on the business of selling or supplying goods in any State whether for commission, remuneration or otherwise and includes any society, club or association which sells or supplies goods to its members and also any firm of a joint Hindu family or the Government. Such person may be the principal, agent, individual or association.

Manager or agent of a dealer to be deemed a dealer.—The manager or agent of a dealer who resides outside the State but carries on the business of selling or supplying goods in the State shall in respect of such business be deemed to be a dealer.

A dispensing chemist dealing in patent medicines is a dealer *North Bengal Stores Ltd. v. Board of Revenue*. 1. S. T. C. 157.

An auctioneer is a dealer as he has dominion and possession of the goods and it is the stroke of his hammer that completes the sale and transfers property or ownership in goods to the bidder who purchases the goods (55 Cal. W.N. 583).

Dyer.—"Dyer" is not a dealer if he dyes the yarn brought to him by a customer and hands it back to him on payment of certain charges as such a contract is a contract of work and not of sale. *Chanthumal Champalal v. The State* 1952 I.T.R. 245.

A person is a dealer if sales takes place in the state through principal place of business out side. *V.G. Vakhan v. The State* 1952 S.T.C. 204.

Printing Press receiving order but goods not delivered cannot be treated as dealer *Ayudhya Prasad Sukhlal v. The Crown* 1951 Nag 24. and so the owner of Agricultural Zirat Land is not a dealer by the mere fact that he sells the excess because of the fact that he cannot consume all the goods produced (21 Pat. 820).

Any person who for an agreed commission or brokerage, buys or sells goods on behalf of known principals specified in his accounts in respect of each transaction is not a dealer but in case he takes only his agreed commission and money collected by him clandestinely without disclosing its nature to their principals on such transactions can be treated as a dealer and exemption cannot be claimed by him. *Abdul Samad Khan v. Rex (U.P.)* (1948). 1 S.T.C. 180.

Assessee provided with machinery and plant by the Government whom it had to supply dehydrated meat, the meat being supplied to the assessee by another contractor on payment and assessee charging Government on fixed scale was held to be a dealer *Mohd Amin Bros. v. The Province of Bihar*. A.I.R. 1951 Pat 197.

Sale.—Sale means any transfer of property in goods by any person for cash or deferred payment or other valuable consideration and includes a transfer of property in goods involved in the execution of a contract but does not include a mortgage, hypothecation, charge or pledge. It also includes a transfer of goods in the higher purchase or other instalment system of payment, notwithstanding the fact that the vendor may retain the title in goods as a security for payment of the price. The definition given is with all its grammatical variations and cognate expressions.

The definition of sale as given in various Sales-tax Acts is much wider in scope and amplitude than in the Sales of Goods Act. An essential requisite for *sale or contract of sale* under the Sales of Goods Act is that the consideration should be money but such is not the case to constitute sale under the Sales-tax Acts as thereunder the consideration may be money or otherwise. Every sale under the Sales of Goods Act will be covered by the definition given in Sales-tax Acts but every sale within the definition of Sales-tax Act cannot come within the definition of sale under the Sales of Goods Act.

Silver received as equivalent weight of the finished silver article from the customer was other valuable consideration within the definition of sale and the transaction should be characterised as a sale and not as a barter. (1949 Mad. 95).

Ingredients of sale.—To constitute sale there must be *transfer of property in goods*, and the transfer of property must be in the course of trade or business.

Where order was placed for the goods and no delivery was given or taken and there was nothing to show that the goods were actually transferred from the seller to the buyer, it was held that in such circumstances it could not be said that sale had taken place. It may be that the dealer could sue the person placing the order and get damages from him but recovery of damages cannot be said to amount sale. *Punam Chand v. The State*. (1951) 2 S.T.C. 14.

Sale.—Sales-tax cannot be charged on the amount of damages when lost in transit even if such amount represented the full price of the goods lost as tax is leviable only when there is a sale, that is, when there is a transfer of property and where goods are lost no question arises of a transfer of property in them. *Newton Chiklie Collieries Ltd. v. The State* 1952 I.T.R. 243.

Where the goods at no point of time have been situated in the State which makes such goods taxable, the sale of such goods cannot be deemed to have taken place in that State and in cases where Railway receipt is sent through a bank or by V.P.P. the transfer occurs outside that Province, namely, when the customer takes delivery of the receipt after making payment for it *Lipton Limited Nagpur v. The State* 1952 S.T.C. 224.

Cosmopolitan Club of Madras, a members' club, afforded amenities in sports, indoor games etc. and also supplied refreshments to its members and a question arose whether supply of refreshments amounted to sale. It was held that it did not constitute sale within the definition as the important ingredient of transfer of property was absent as no transfer could be said to have taken place from the club as such to a member. The club cannot be said to do any trade or business in purchasing from outside the requirements of the members and supplying those at a fixed charge. *Cosmopolitan Club, Madras v. The State*.

Location of the place where sale takes place.—To locate the place where transfer of goods takes place so as to constitute a sale, the mere circumstance that the name of the buyer appears as a consignor should not stand in the way of the Court coming to the conclusion on the terms of the contract and the intention of the parties is the sole test to decide it. *Louis Deyfrus v. The State*.

Transactions not sales.—Goods sent from the branch to the head office of a company or firm does not constitute sale (1951 N. L. J. 573) and so the goods sent to *pakka adatia* who undertakes to find buyers and so the goods at approved prices, guaranteeing payment of the price received after reimbursing himself the expenses and appropriating the commission or reward for services does not constitute a sale between the proprietor of the goods and the *pakka adatia*. (1951 N. L. J. 511.)

Machinery Provided by the Act.—Subscription received for the regular supply of monthly parts of all India reporter are not to be included in the turnover as it is a periodical for the purpose of item 26 of the old unamended Schedule II to the C. P. & Berar Sales-tax Act, 1947 but the sale proceeds of separate yearly volums made out of monthly parts cannot be excluded as such volums are not tax free goods. *The All India Reporter Ltd., v. The State* 1952 S. T. C. 219.

Definition of 'SALE' under The Assam Sales Tax Act.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods by any person for cash or deferred payment or other valuable consideration, and includes a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge. It also includes a transfer of goods on the hire purchase or other instalment system of payment, notwithstanding the fact that the vender may retain the title in the goods as a security for payment of the price :

Provided that, notwithstanding anything to the contrary in the general law relating to the sale of goods, the sale of any goods outside the State of Assam shall be deemed to have taken place in the State of Assam, if such goods have, as a direct result of such sale, been actually delivered in the State of Assam for the purpose of consumption herein :

Provided further that any use by a dealer from his stock of any goods liable to tax under this Act shall be deemed to be a sale.

Definition of "SALE" under The Begal Finance Sales Tax Act.—"Sale" means any transfer of property in goods for money consideration and includes a transfer of property in goods supplied in the execution of a contract but does not include a mortgage, hypothecation, charge or pledge ; and any grammatical variations of the expression "Sales" shall be construed accordingly.

Explanation(1).—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Explanation(2).—A sale shall be deemed to have taken place in West Bengal if the goods are actually delivered in West Bengal as a direct result of such sale for the purpose of consumption in West Bengal notwithstanding the fact that under the general law relating to the sale of goods, the property in the goods has, by reason of such sale, passed in another State.

Definition of "SALE" under The Bihar Sales Tax Act.—"Sale" means, with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge :

Provided that a transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be sale :

Provided further that the consumption of any goods by a dealer from his stock of goods liable to tax under this Act shall be deemed to be a sale :

Provided further that the sale of goods in respect of a forward contract, whether goods under such contract are actually delivered or not, shall be deemed to have taken place on the date originally agreed upon for delivery.

Explanation : The sale of any goods actually delivered in Bihar as a direct result of such sale for the purpose of consumption in Bihar shall be deemed for the purpose of this Act to have taken place in Bihar notwithstanding the fact that under the general law relating to sale of goods the property in the goods has, by reason of such sale, passed in another State.

The sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged ; or

The carrying out of any contract, less such portion as may be prescribed, of such amount, representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract.

Definition of "SALE" under The Bengal Finance (Sales-Tax) Act 1941, as Extended the State of Delhi.—"Sale" means any transfer of property in goods for money consideration and includes a transfer of property in goods supplied in the execution of a contract but does not include a mortgage, hypothecation, charge or pledge ; and any grammatical variations of the expression "Sale" shall be construed accordingly.

Explanation (1).—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price be deemed to be a sale.

Explanation (2).—A sale shall be deemed to have taken place in the State of Delhi if the goods are actually delivered in the State of Delhi as a direct result of such sale for the purpose of consumption in State of Delhi notwithstanding the fact under the general law relating to the sale of goods the property in the goods has by reason of such sale passed in an other State :

Definition of "sale" under The Bombay Sales Tax Act, 1946.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge ;

Explanation (1).—A transfer of goods on hire, purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains title to any goods as security for payment of the price, be deemed to be sale.

Explanation (2).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which actually been delivered in the State of Bombay as a direct result of such sale for the purpose of

consumption in the said State shall be deemed, for the purpose of this Act, to have taken place in the said State, irrespective of the fact that the Property in the Goods has, by reasons of such sale, passed in another State.

Definition of "SALE" under The Bombay Sales Tax Act 1952.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration and includes any supply by a society, a club, or an association to its members on payment of price or on fees or subscription but does not include a mortgage, hypothecation, charge or pledge; the words "buy" and "purchase" shall be construed accordingly;

Explanations.—Notwithstanding anything contained in the Indian Sale of Goods Act, 1930—

- (1) an agreement for hire purchase or other instalment system of payment shall, notwithstanding the fact that the seller, pending the payment of the entire amount of the price or any part thereof, retains property in the goods as security for the payment of the price, be deemed to be a sale made on the date of such agreement;
- (2) the sale of any goods which have actually been delivered in the State of Bombay as a direct result of such sale for the purpose of consumption in the said State, shall be deemed, for the purpose of this Act, to have taken place in the said State, irrespective of the fact that the property in the goods has, by reason of such sale, passed in another State.

Definition of "SALE" Under The Hyderabad General Sales-tax Act.—"Sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and included also a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.

Explanation (2).—Notwithstanding anything to be contrary in any other law for the time being in force, a transfer of goods in respect of which no tax can be imposed by reason of the provisions contained in Article 286 of the Constitution, shall not be deemed to be "Sale" within the meaning of this clause.

Definition of "SALE" under The Madhya Pradesh Sales Tax Act, 1947 As Extended to The State of Kutch.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in the course of the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price be deemed to be a sale.

SALES TAX ACTS AND ALLIED LAWS

Explanation (2).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, but subject to the provision contained in the Explanation of Clause (1) of Article 286 of the Constitution.

- (a) if the goods were actually in this State at the time when the contract of sale or purchase in respect thereof was made ; or
- (b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced or found in this State at any time after the contract of sale or purchase in respect thereof was made.

Definition of "SALE" under The Madhya Bharat Sales Tax Act.—*"Sale"* with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration including a transfer of property in goods made in course of execution of a contract but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on hire-purchase or other instalments system of payments shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Explanation (2).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which have actually been delivered in the State of Madhya Bharat as a direct result of such sale for the purpose of consumption in the said State shall be deemed, for the purposes of this Act, to have taken place in the said State, irrespective of the fact that the property in the goods has by reason of such sale, passed in another State.

Definition of "SALE" under The Madhya Pradesh Sales Tax Act.—*"Sale"* with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in the course of the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge ;

Explanation (1).—A transfer of goods on hire-purchase or other installment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale ;

Explanation (2).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, but subject to the provision contained in the Explanation of Clause (1) of Article 286 of the Constitution.

- (a) If the goods were actually in the State at the time when the contract of sale or purchase in respect thereof was made, or
- (b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced or found in this State at any time after the contract of sale or purchase in respect thereof was made.

Definition of "SALE" under The Madras General Sales Tax Act.—*"Sale"* with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, and includes also a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.

Explanation (2).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale or purchase of any goods shall be deemed, for the purposes of this Act, to have taken place in this State wherever the contract of sale or purchase might have been made :

- (a) If the goods were actually in this State at the time when the contract of sale or purchase in respect thereof was made, or
- (b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in this State at any time after the contract of sale or purchase in respect thereof was made.

Definition of "SALE" under The Assam Sales Tax Act as extended to the State of Manipur.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods by any person for cash or deferred payment or other valuable consideration and includes a transfer of property in goods involved in the execution of a contract but does not include a mortgage, hypothecation, charge or pledge. It also includes a transfer of goods on the hire-purchase or other instalment system of payment, notwithstanding the fact that the vender may retain the title in the goods as a security for payment of the price ;

Explanation.—Notwithstanding anything contained in this Act :—

- (a) a tax on the sale or purchase of goods shall not be imposed under this Act.
 - (i) where such sale and purchase takes place outside the State of Manipur ;
 - (ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of the territory of India ;
- (b) A Tax on the sale or purchase of and goods shall not be imposed where such sale or purchase takes place in the course of interstate trade or commerce except in so far as Parliament may by law otherwise provide.
- (c) The Explanation to Clause (i) of Article 286 of the Constitution shall apply for the interpretation of sub-clause (i) of Clause (a).

Definition of "SALE" under The Mysore Sales Tax Act, 1948.—"Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or deferred payment or other valuable consideration, and includes a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation.—A transfer of goods on hire purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price be deemed to be a sale.

Definition of "SALE" under The Orissa Sales Tax Act.—"Sale" means, with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge.

Provided that a transfer of goods on hire purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Definition of "SALE" under The Patiala & East Punjab States Union 2006.—"sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge.

Explanation :—A transfer of goods on hire purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Definition of "SALE" under The Punjab General Sales Tax Act.—"Sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of a contract, but does not include mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price be deemed to be a sale.

Explanation (2).—A transfer of goods by a dealer to himself or his family or any other relation without payment shall also be deemed to be a "sale".

Definition of "SALE" under The Saurashtra Sales Tax Ordinance.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on hire purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Explanation (2).—Notwithstanding anything to the contrary, in the Indian Sale of Goods Act, 1930, as adapted and applied to the United State of Saurashtra, the sale of any goods which are actually in the United State of Saurashtra at the time when the contract for sale (as defined in that Act as adapted and applied) is made in respect thereof, shall wherever the said contract of sale is made, be deemed for the purposes of this Ordinance to have taken place in the United State of Saurashtra.

Definition of "SALE" under The United State of Travancore and Cochin Sales Tax Act.—"sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or

other valuable and includes also a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on the hire purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.

Explanation (2).—Notwithstanding anything to the contrary in the Sale of Goods Act for the time being in force, the sale or purchase of any goods shall be deemed for the purpose of this Act, to have taken place in the United State wherever the contract of sale or purchase might have been made.

Definition of "SALE" under The Uttar Pradesh Sales Tax Act.—"Sale" means, within its grammatical variations and cognate expressions any transfer of property in goods for cash or deferred payment or other valuable consideration and includes forward contracts but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

Explanation (2).—Notwithstanding anything in the Indian Sale of Goods Act, 1930, or any other law for the time being in force, the sale of any goods;

(i) which are actually in the Uttar Pradesh at the time when in respect thereof, the contract of sale as defined in section 4 of that Act is made;

(ii) or which are produced or manufactured in the Uttar Pradesh by the producer or manufacturer thereof, shall, wherever the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in the Uttar Pradesh.

Definition of "SALE" under The Vindya Pradesh Sales Tax Act.—"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in the course of the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge ;

Explanation (1).—A transfer of goods on hire-purchase or other instalment system or payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale .

Explanation (2).—Notwithstanding anything to the contrary in any other law for the time being in force, a transfer of goods, in respect of which no tax can be imposed by reasons of the provisions contained in Article 286 of the Constitution, shall not be deemed to be a sale within the meaning of this clause;

(a) if the goods were actually in this State at the time when the contract of sale or purchase in respect thereof was made; or

(b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced or found in this State at any time after the contract of the sale or purchase in respect thereof was made.

"Sale price".—means the amount payable to a dealer as valuable consideration for the sale or supply of any goods, less any sum allowed as cash discount according to the ordinary trade practice but including any sum charged for anything done by the dealer, with or in respect of the goods at the time of or before delivery thereof, other than the cost freight and delivery or cost of installation where such cost is separately charged or the carrying out of any contract less such fraction of such amount as represents the prescribed proportion of the cost of labour used in carrying out such contract.

Sale-tax not included in sale price.—Sale price does not include any amount charged and realised separately from the buyer by the dealer as Sales-tax where it is not expressly included in the definition of the sale price by the statute.

Determination of sale price when consideration other than money.—Under rules framed a dealer who sells goods for valuable consideration other than money must separately specify in the return of the turnover, the quantity of the goods so sold and the description in sufficient detail and the value of the consideration for which the goods have been sold so as to enable the tax officer to determine the value of such consideration after such inquiry as he considers necessary.

"Sale Price" as defined in section 2 (h) of the Bengal Finance (Sales Tax) Act, 1941 does include any amount charged and realised separately from the buyer by the dealer as sales tax. Sub-section (2) (b) of section 5 provides for a deduction of $4\frac{1}{2}$ per cent on taxable turnover shows clearly that the legislature intended that the amount payable by the purchasers to dealers as Sales-tax should be included in arriving at the amount of the gross turnover and the taxable turnover. It might well be said that the legislature realised that the dealer would, in effect, be made to pay tax on what was paid by the consumer as tax and, therefore to give the dealer some relief a deduction of $4\frac{1}{2}\%$ was allowed. Therefore the gross turnover to be ascertained by taking the aggregate of the amounts of sale prices and parts of sale prices received by the dealer with the inclusion of all amounts charged and realised as "Sales-tax" by the dealer during the period in question. Reference may be made to *Bata Shoe Co., Ltd. v. Member, Board of Revenue, West Bengal*. 53, C. W. N. 278.

It appears quite clear from the working of this Act that the dealer is the person taxed. If the dealer to save himself passes, as it were, the tax on to the consumer, all he does is to increase his price in order that he may be able to pay the tax without loss to himself. The consumer is not taxed under the Act and cannot be made to pay any tax. What he pays as sales tax is, nothing more than an increased price for the goods so that the dealer may pay his tax without loss to himself *Supra*.

"Goods".—means all kinds of moveable property other than newspapers actionable claims, stocks, shares, securities and include all materials, articles and commodities whether or not to be used for the purposes under the various clauses of Sales-tax Act.

Mere mention of the goods in the application for registration is not enough to treat those as goods constituting one line of business, the volume and degree of frequency in business transactions in this line is the determining factor. Second-hand goods with no connection with the business of the dealer are not to be included in the taxable turnover.

The printing concern doing job work on paper supplied by the customer cannot be said to sell goods as in such a case the customer receives from the printer the intangible effect or out-come of the work done on such paper by the printer using his tools and his printing ink in the shape of impressions and as such cannot be considered goods. (1951 N. L. J. 613).

THE INDIAN SALE OF GOODS ACT 1930

Act No. III of 1930.

An Act to define and amend the law relating to the sale of goods.

WHEREAS it is expedient to define and amend the law relating to the sale of goods; It is hereby enacted as follows:—

CHAPTER I *Preliminary.*

1. Short title, extent and commencement. (1) This Act may be called the Indian Sale of Goods Act, 1930.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on the 1st day of July, 1930.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “ buyer ” means a person who buys or agrees to buy goods ;

(2) “ delivery ” means voluntary transfer of possession from one person to another ;

(3) goods are said to be in a “ deliverable state ” when they are in such state that the buyer would under the contract be bound to take delivery of them ;

(4) “ document of title to goods ” includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented ;

(5) “ fault ” means wrongful act or default ;

(6) “ future goods ” means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale ;

(7) “ goods ” means every kind of moveable property other than actionable claims and money ; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale ;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not ;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods ;

(10) "price" means the money consideration for a sale of goods ;

(11) "property" means the general property in goods, and not merely a special property ;

(12) "quality of goods" includes their state or condition ;

(13) "seller" means a person who sells or agrees to sell goods ;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made ; and

(15) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (IX of 1872), have the meaning assigned to them in that Act.

3. Application of provisions of Act IX of 1872.—The unrepealed provisions of the Indian Contract Act, 1872 (IX of 1872), save in so far as they are inconsistent with the express provisions of this Act ; shall continue to apply to contracts for the sale of goods.

CHAPTER II

Formation of the Contract.

Contract of Sale

4. Sale and agreement to sell.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

5. Contract of sale how made.—(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract.

6. Existing or future goods.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. Goods perishing before making of contract.—Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

8. Goods perishing before sale but after agreement to sell.—Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or, become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

The price.

9. Ascertainment of price.—(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

10. Agreement to sell at valuation.—(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided :

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

11. Stipulations as to time.—Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

12. Condition and warranty.—(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

13. When condition to be treated as warranty.—(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall effect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

14. Implied undertaking as to title, etc.—In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is—

- (a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass ;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods ;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

15. Sale by description.—Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description ; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

16. Implied conditions as to quality or fitness.—Subject to the provisions of this Act and of any other law for the time being in force, there is

no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows :—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose :

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality :

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

17. Sales by sample.—(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied to that effect.

(2) In the case of a contract for sale by sample there is an implied condition—

- (a) that the bulk shall correspond with the sample in quality ;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample ;
- (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III

Effects of the Contract.

Transfer of property as between seller and buyer.

18. Goods must be ascertained.—Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

19. Property passes when intended to pass.—(1) Where there is a contract for the sale of specific or ascertained goods the property in them is

transferred to the buyers at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rule contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state.—Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

21. Specific goods to be put into a deliverable state.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, property does not pass until such thing is done and the buyer has notice thereof.

22. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

23. Sale of unascertained goods and appropriation.—(1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) **Delivery to carrier.**—Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

24. Goods sent on approval or "on sale or return".—When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction ;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. Reservation of right of disposal.—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission, to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

26. Risk *prima facie* passess with property.—Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not :

Provided that, where delivery has been delayed, through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault :

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of title.

27. Sale by person not the owner.—Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell :

Provided that, where a mercantile agent is, with the consent of the owner in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same ; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. Sale by one of joint owners.—If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

29. Sale by person in possession under voidable contract.—When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 (IX of 1872) but the contract has not been rescinded at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

30. Seller or buyer in possession after sale.—(1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV

Performance of the Contract.

31. Duties of seller and buyer. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract or sale.

32. Payment and delivery are concurrent conditions.—Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

33. Delivery.—Delivery of goods sold may be made by doing anything which the parties agreed shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

34. Effect of part delivery.—A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

35. Buyer to apply for delivery.—Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

36. Rules as to delivery.—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

37. Delivery of wrong quantity.—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

38. Instalment deliveries.—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for and the seller makes no delivery or defective delivery in respect of one or more instalments or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

39. Delivery to carrier or wharfinger.—(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to

the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to wharfinger for sale custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger, as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

40. Risk where goods are delivered at distant place.—Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

41. Buyer's right of examining the goods—(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

42. Acceptance.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

43. Buyer not bound to return rejected goods.—Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

44. Liability of buyer for neglecting or refusing delivery of goods.—When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss charge for the care and custody of the goods :

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V

Rights of unpaid seller against the goods.

45. "Unpaid seller" defined.—(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition, on which it was received, has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

46. Unpaid seller's rights.—(1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) a lien on the goods for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them ;
- (c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

47. Seller's lien.—(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them untill payment or tender of the price in the following cases, namely.—

- (a) where the goods have been sold without any stipulation as to credit ;
- (b) where the goods have been sold on credit, but the term of credit has expired ;
- (c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

48. Part delivery.—Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

49. Termination of lien.—(1) The unpaid seller of goods loses his lien thereon—

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods ;

(b) when the buyer or his agent lawfully obtains possession of the goods ;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

50. Right of stoppage in transit.—Subject to the provision of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

51. Duration of transit.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

52. How stoppage in transit is effected.—(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose

possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of the reasonable diligence may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(9) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to or according to the directions of the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by buyer and seller.

53. Effect of sub-sale or pledge by buyer.—(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto :

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if, such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

54. Sale not generally rescinded by lien or stoppage in transit.—(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

SALES TAX ACTS & ALLIED LAWS

CHAPTER VI

Suits for Breach of the Contract.

55. Suit for price.—Where under a contract of the sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

56. Damages for non-acceptance.—Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

57. Damages for non-delivery.—Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

58. Specific performance.—Subject to the provisions of Chapter II of the Specific Relief Act, 1877 (I of 1877), in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

59. Remedy for breach of warranty.—(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) use the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

60. Repudiation of contract before due date.—Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

61. Interest by way of damages and special damages.—(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be

recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(a) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable ;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

62. Exclusion of implied terms and conditions.—Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

63. Reasonable time a question of fact.—Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

64. Auction sale.—In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale ;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner ; and until such announcement is made, any bidder may retract his bid ;

(3) a right to bid may be reserved expressly by or on behalf of the seller and where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf, may, subject to the provisions hereinafter contained bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person ; and any sale contravening this rule may be treated as fraudulent by the buyer ;

(5) the sale may be notified to be subject to a reserved or upset price ;

(6) if the seller makes use of pretended bidding to raise the price : the sale is voidable at the option of the buyer.

64-A. In contracts of sale amount of increased or decreased duty to be added or deducted.—In the event of any duty of customs or excise on any goods being imposed, increased, decreased or remitted after the making of any contract for the sale of such goods without stipulation as to the payment of duty where duty was not chargeable at the time of the

making of the contract, or for the sale of such goods duty-paid where duty was chargeable at that time—

- (a) if such imposition or increase so takes effect that the duty or increased duty, as the case may be, or any part thereof, is paid, the seller may add so much to the contract price as will be equivalent to the amount paid in respect of such duty or increase of duty, and he shall be entitled to be paid and to sue for and recover such addition, and
- (b) if such decrease or remission so takes effect that the decreased duty only or no duty, as the case may be, is paid, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty or remitted duty; and he shall not be liable to pay, or be sued for or in respect of, such deduction.

65. [*Repeal. Rep. by Repealing Act, 1938 (I of 1938), s. 2 and Sch.]*

66. **Savings.**—(1) Nothing in this Act or in any repeal effected thereby shall affect or be deemed to affect—

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
- (b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or
- (c) anything done or suffered before the commencement of this Act, or
- (d) any enactment relating to the sale of goods which is not expressly repealed by this Act, or
- (e) any rule of law not inconsistent with this Act.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Act.

(3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

CONTRACT

Contract.—Contract means any agreement for carrying out for cash or deferred payment or other valuable consideration,

- (a) the preparation, construction, fitting out, improvement or repair of any movable property or of any building, road, bridge or other immovable property, or
- (b) the installation or repair of any machinery affixed to a building or other immovable property,
- (c) the overhaul or repair of any motor vehicle or any sea going vessel.

Contract—Contract in proviso to Section 4 (1) of Madhya Pradesh Sales-tax Act means contract in the special sense defined under section 2 (b) of the Act and should not be understood in the general sense as an agreement to sell or to levy. So all agreements to sell and to buy made before the date of the commencement of the Act are not exempted and only contracts in the special sense defined under section 2 (b) are exempted. *Hirji Gobindji in re.* 1952 S. T. C. 263.

THE INDIAN CONTRACT ACT, 1871

Act No. IX of 1872

WHEREAS it is expedient to define and amend certain parts of the law relating to contract ; It is hereby enacted as follows :—

Preliminary

1. Short title, extent and commencement.—This Act may be called the Indian Contract Act, 1872.

It extends to the whole of India except the State of Jammu and Kashmir; and it shall come into force on the first day of September, 1872.

Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise :

- (c) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee" :
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement :
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises :
- (g) An agreement not enforceable by law is said to be void :
- (h) An agreement enforceable by law is a contract :
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I

3. Communication, acceptance and revocation of proposals.—The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposals, acceptance or revocation, or which has the effect of communicating it.

4. Communication when complete.—The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor ;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

5. Revocation of proposals and acceptances.—A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

6. Revocation how made.—A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party ;

- (2) by the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;
- (3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute.—In order to convert a proposal into a promise, the acceptance must—

- (1) be absolute and unqualified ;
- (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but if he fails to do so, he accepts the acceptance.

8. Acceptance by performing conditions, or receiving consideration.—Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. Promises, express and implied.—In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II

10. What agreements are contracts.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Who are competent to contract.—Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. What is a sound mind for the purposes of contracting.—A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

SALES TAX ACTS & ALLIED LAWS

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

13. **"Consent" defined.**—Two or more persons are said to consent when they agree upon the same thing in the same sense.

14. **"Free consent" defined.**—Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. **"Coercion" defined.**—"Coercion" is the committing or threatening to commit, any act forbidden by the Indian Penal Code (XLV of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code (XLV of 1860) is or is not in force in the place where the coercion is employed.

16. **"Undue influence" defined.**—(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section III of the Indian Evidence Act, 1872 (I of 1872).

17. **"Fraud" defined.**—"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance or by his

agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :—

- (1) the suggestion, as a fact, of that which is not true by one who does not believe it to be true ;
- (2) the active concealment of a fact by one having knowledge or belief of the fact ;
- (3) a promise made without any intention of performing it ;
- (4) any other act fitted to deceive ;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

18. "Misrepresentation" defined.—"Misrepresentation" means and includes :—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one, claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him ;
- (3) causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. Voidability of agreements without free consent.—When consent to an agreement is caused by coercion, * * * * fraud or misrepresentation the agreement is a contract voidable at the option of the party whose consent, was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

19B. Power to set aside contract induced by undue influence.—When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to Court may seem just.

20. Agreement void where both parties are under mistake as to matter of fact.—Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

21. Effect of mistakes as to law.—A contract is not voidable because it was caused by a mistake as to any law in force in India ; but a mistake as to a law not in force in India has the same effect as a mistake of fact.

22. Contract caused by mistake of one party as to matter of fact.—A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

23. What considerations and objects are lawful and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law ; or

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another ; or

the Court regards it as immoral ; or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Void Agreements.

24. Agreement void, if considerations and objects unlawful in part.—If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

25. Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt, barred by limitation law.—An agreement made without consideration is void unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other, or unless.

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

(3) It is promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation (1).—Nothing in this section shall affect the validity as between the donor and donee, of any gift actually made.

Explanation (2).—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

26. Agreement in restraint of marriage void.—Every agreement in restraint of the marriage of any person, other than a minor, is void.

27. Agreement in restraint of trade void.—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception.—**Saving of agreement not to carry on business of which good-will is sold.**—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein : Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

28. Agreements in restraint of legal proceedings void.—Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—**Savings of contract to refer to arbitration dispute that may arise.**—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Suits barred by such contracts.—When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.

Exception 2.—**Saving of contract to refer questions that have already arisen.**—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

29. Agreement void for uncertainty.—Agreements, the meaning of which is not certain, or capable of being made certain, are void.

30. Agreements by way of wager void.—Agreements by way of wager are void ; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse racing.—This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section 294-A of the Indian Penal Code not affected.—Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294-A of the Indian Penal Code (XLV of 1860) apply.

CHAPTER III

Of Contingent Contracts

31. "Contingent contract" defined.—A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract does or does not happen.

32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible such contracts become void.

33. Enforcement of contracts contingent on an event not happening.—Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.—If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

35. When contracts become void which are contingent on happening of specified event within fixed time.—Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.—Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

36. Agreement contingent on impossible events void.—Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

CHAPTER IV

Of the performance of Contracts

Contracts which must be performed

37. Obligation of Parties to contracts.—The parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

38. Effect of refusal to accept offer of performance.—Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

- (1) it must be unconditional ;
- (2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do ;
- (3) if the offer is an offer to deliver anything to the promisee the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

39. Effect of refusal of party to perform promise wholly.—When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words conduct, his acquiescence in its continuance.

By whom Contracts must be performed

40. Person by whom promise is to be performed.—If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

41. Effect of accepting performance from third person.—When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. Devolution of joint liabilities.—When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. Any one of joint promisors may be compelled to perform.—When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.—Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.—If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal; payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

44. Effect of release one joint promisor.—Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

45. Devolution of joint rights.—When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors and, after the death of the last survivor, with the representatives of all jointly.

Time and place for performance.

46. Time for performance of promise where no application is to be made and no time is specified.—Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question “what is a reasonable time” is, in each particular case, a question of fact.

47. Time and place for performance of promise, where time is specified and no application to be made.—When a promise is to be performed on a certain day and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

48. Application for performance on certain day to be at proper time and place.—When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

49. Place for performance of promise where no application to be made and no place fixed for performance.—When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

50. Performance in manner or at time prescribed or sanctioned by promisee.—The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance of Reciprocal Promises.

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.—When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

52. Order of performance of reciprocal promises.—Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

53. Liability of party preventing event on which contract is to take effect.—When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.—When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

55. Effect of failure to perform at fixed time in contract in which time is essential.—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specific time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

57. Reciprocal promise to do things legal, and also other things illegal.—Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

58. Alternative promise, one branch being illegal.—In the case of an alternative promise, one branch which is legal and the other illegal, the legal branch alone can be enforced.

Appropriation of Payments.

59. Application of payment where debt to be discharged is indicated.—Where a debtor owing several distinct debts to one person, makes a payment, to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt the payment, if accepted, must be applied accordingly.

60. Application of payment where debt to be discharged is not indicated.—Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

61. Application of payment where neither party appropriates.—Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be Performed.

62. Effect of novation, rescission and alteration of contract.—If the parties to a contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed.

63. Promisee may dispense with or remit performance of promise.—Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance: or may accept instead of it any satisfaction which he thinks fit.

64. Consequences of rescission of voidable contract.—When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

65. Obligation of person who has received advantage under void agreement or contract that becomes void.—When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

66. Mode of communicating or revoking rescission of voidable contract.—The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.—If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance.

CHAPTER V.

Of certain Relations Resembling those created by Contract.

68. Claim for necessities supplied to person incapable of contracting or on his account.—If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

69. Reimbursement of person paying money due by another in payment of which he is interested.—A person who is interested in the payment of money which another is bound by law to pay, and therefore pays it, is entitled to be reimbursed by the other.

70. Obligation of person enjoying benefit of non-gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

71. Responsibility of finder of goods.—A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

72. Liability of persons to whom money is paid, or thing delivered by mistake or under coercion.—A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

CHAPTER VI.

Of the Consequences of breach of Contract.**73. Compensation for loss or damage caused by breach of contract.—**

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss of damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

74. Compensation for breach of contract where penalty stipulated for.—When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance of other instrument of the same nature, or under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

75. Party rightfully rescinding contract entitled to compensation.—

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII

Sale of Goods.

Secs. 76 to 123 Repealed by Sale of Goods Act S. 65.

CHAPTER VIII

Of Indemnity and Guarantee

124. "Contract of indemnity" defined.—A contract by which one party promises to save the other from loss caused to him by the conduct of

the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

125. Rights of indemnity-holder when sued.—The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies ;
- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit ;
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

126. "Contract of guarantee", "surety", "principal debtor" and "creditor".—A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

127. Consideration for guarantee.—Anything done, or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

128. "Surety liability."—The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

129. "Continuing guarantee."—A guarantee which extends to a series of transactions is called a "continuing guarantee".

130. Revocation of continuing guarantee.—A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

131. Revocation of continuing guarantee by surety's death.—The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.—Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

133. Discharge of surety by variance in terms of contract.—Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

134. Discharge of surety by release or discharge of principal debtor. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.—A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Surety not discharged when agreement made with third person to give time to principal debtor.—Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

137. Creditor's forbearance to sue does not discharge surety.—Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the balance of any provision in the guarantee to the contrary, discharge the surety.

138. Release of one co-surety does not discharge others.—Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.—If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy at the surety himself against the principal debtor is hereby impaired, the surety is discharged.

140. Rights of surety on payment or performance.—Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. Surety's right to benefit of creditor's securities.—A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

142. Guarantee obtained by misrepresentation invalid.—Any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction is invalid,

143. Guarantee obtained by concealment invalid.—Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

144. Guarantee on contract that creditor shall not act on it until co-surety joins.—Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

145. Implied promise to indemnify surety.—In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

146. Co-sureties liable to contribute equally.—Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

147. Liability of co-sureties bound in different sums.—Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

CHAPTER IX

Of Bailment.

148. "Bailment", "bailor" and "bailee" defined.—A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

149. Delivery to bailee how made.—The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

150. Bailor's duty to disclose faults in goods bailed.—The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in the goods bailed.

151. Care to be taken by bailee.—In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

152. Bailee when not liable for loss, etc., of thing bailed.—The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

153. Termination of bailment by bailee's act inconsistent with conditions.—A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

154. Liability of bailee making unauthorized use of goods bailed.—If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

155. Effect of mixture, with bailor's consent, of his goods with bailee's.—If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

156. Effect of mixture without bailor's consent, when the goods can be separated.—If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, he property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

157. Effect of mixture, without bailor's consent, when the goods cannot be separated.—If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

158. Repayment by bailor of necessary expenses.—Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. Restoration of goods lent gratuitously.—The lender of a thing for use may at any time require its return, if the loan was gratuitous even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. Return of goods bailed on expiration of time or accomplishment of purpose.—It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. Bailee's responsibility when goods are not duly returned.—If by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

162. Termination of gratuitous bailment by death.—A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

163. Bailor entitled to increase or profit from goods bailed.—In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

164. Bailor's responsibility to bailee.—The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

165. Bailment by several joint owners.—If several joint owners of goods bail them the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

166. Bailee not responsible on re-delivery to bailor without title.—If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

167. Right of third person claiming goods bailed.—If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

168. Right of finder of goods; may sue for specific reward offered.—The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

169. When finder of thing commonly on sale may sell it.—When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) When the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder in respect of the thing found, amount to two-thirds of its value.

170. Bailee's particular lien.—When the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.—Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges

172. "Pledge", "pawnor" and "pawnee" defined.—The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

173. Pawnee's right of retainer.—The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.—The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. Pawnee's right as to extraordinary expenses incurred.—The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. Pawnee's right where pawnor makes default.—If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. Defaulting pawnor's right to redeem.—If a time is stipulated for the payment of the debt; or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. Pledge by mercantile agent.—Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same provided that the pawnee acts in good faith and has not at the time of the pledge noticed that the pawnor has not authority to pledge.

Explanation.—In this section, the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (III of 1930.)

178A. Pledge by person in possession under voidable contract.—When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

179. Pledge where pawnor has only a limited interest.—Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailors against Wrong-doers.

180. Suit by bailor or bailee against wrong-doer.—If a third person wrongfully deprives the bailee of the use of possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

181. Apportionment of relief or compensation obtained by such suits.—Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X

Appointment and Authority of Agents.

182. "Agent" and "principal" defined.—An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

183. Who may employ agent.—Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. Who may be an agent.—As between the principal and third persons any person may become an agent, but no person who is not of the age of principal according to the provisions in that behalf herein contained.

185. Consideration not necessary.—No consideration is necessary to create an agency.

186. Agent's authority may be expressed or implied.—The authority of an agent may be expressed or implied.

187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing may be accounted circumstances of the case.

188. Extent of agent's authority.—An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

189. Agent's authority in an emergency.—An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Sub-Agents.

190. When agent cannot delegate.—An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a sub-agent must, be employed.

191. "Sub-agent" defined.—A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Representation of principal by sub-agent properly appointed.—Where a sub-agent is properly appointed the principal is, so far as regards third persons, represented by the sub-agent and is bound by and responsible for his acts as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agents.—The agent is responsible to the principal for the acts of the sub-agent.

Sub-Agent's responsibility.—The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

193. Agent's responsibility for sub-agent appointed without authority.—Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Relation between principal and person duly appointed by Agent to act in business of agency.—Where an agent holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

195. Agent's duty in naming such person.—In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this so selected.

Ratification.

196. Right of person as to acts done for him without his authority. Effect of ratification.—Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or implied.—Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

198. Knowledge requisite for valid ratification.—No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

199. Effect of ratifying unauthorized act forming part of a transaction.—A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. Ratification of unauthorized act cannot injure third person.—An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Revocation of Authority.

201 Termination of agency.—An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Termination of agency where agent has an interest in subject matter.—Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

203. When principal may revoke agent's authority.—The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

204. Revocation where authority has been partly exercised.—The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

205. Compensation for revocation by principal, or renunciation by agent.—Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Notice of revocation or renunciation.—Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207. Revocation and renunciation may be expressed or implied.—Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

208. When termination of agent's authority takes effect as to agent, and as to third persons.—The termination of the authority of an agent does not,

so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them.

209. Agent's duty on termination of agency by principal's death or insanity.—When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210. Termination of sub-agent's authority.—The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

211. Agent's duty in conducting principal's business.—An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

212. Skill and diligence required from agent.—An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequence of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

213. Agent's accounts.—An agent is bound to render proper accounts to his principal on demand.

214. Agent's duty to communicate with principal.—It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

215. Right of principal when agent deals, on his own account in business of agency without principal's consent.—If an agent deals on his own accounts in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

216. Principal's right to benefit gained by agent dealing on his own account in business of agency.—If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

217. Agent's right of retainer out of sums received on principal's account.—An agent may retain, out of any sums received on account of the principal in

the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Agent's duty to pay sums received for principal.—Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. When agent's remuneration becomes due.—In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such Act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

220. Agent not entitled to remuneration for business misconducted.—An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

221. Agent's lien on principal's property.—In the absence of any contract to the contrary, an agent is entitled to retain goods, paper and other property, whether moveable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's Duty to Agent.

222. Agent to be indemnified against consequences of lawful acts.—The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

223. Agent to be indemnified against consequences of acts done in good faith.—Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third person.

224. Non-liability of employer of agent to do a criminal act.—Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

225. Compensation to agent for injury caused by principal's neglect.—The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Effect of agency on contract with third persons.

226. Enforcement and consequences of Agent's contracts.—Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

227. Principal how far bound, when agent exceeds authority.—When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is

beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

228. Principal not bound when excess of agent's authority is not separable.—Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

229. Consequences of notice given to agent.—Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

230. Agent cannot personally enforce, not be bound by, contracts on behalf of principal.—In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.—Such a contract shall be presumed to exist in the following cases:—

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.

231. Rights of parties to a contract made by agent not disclosed.—If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Performance of contract with agent supposed to be principal.—Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

233. Right of person dealing with agent personally liable.—In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

234. Consequence of inducing agent or principal to act on behalf that principal or agent will be held exclusively liable.—When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards, hold liable the agent or principal respectively.

235. Liability of pretended agent.—A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

236. Person falsely contracting as agent not entitled to performance.—A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

237. Liability of principal inducing belief that agent's unauthorized acts were authorized.—When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

238. Effect, on agreement, of misrepresentation or fraud by agent.—Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

SALES TAX PROCEDURE

Liability to pay tax

Manager and agent also liable to pay tax.—Every dealer and his manager and agent carrying on business of buying and selling goods is liable to pay tax on the sale and also any agent of a non-resident.

Legal representative liable when dealer dies:—In case the dealer dies after assessment but before payment of tax, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased to the extent to which it is capable of meeting the charge, the tax assessed as payable by such dealer.

Joint liability of transfer and transferee.—In case the ownership of the business is transferred wholly or in part of a registered dealer, the liability to pay tax due in respect of such business or part of tax remaining unpaid at the time of transfer shall be jointly and severally on the transferer and transferee.

Liability of guardian and trustee—Where the business in respect of which tax is payable under the Sales-tax Act is carried on by or in charge of any guardian, trustee, or agent of a minor or other incapacitated person on behalf of or for the benefit of such minor or incapacitated person, the tax shall be levied from such guardian, trustee or agent.

Liability of Official Receiver etc :—Where the estate or any portion thereof of a dealer owning a business in respect of which tax is payable under the sales-tax Act, is under the control of the Court of Wards the Administrator General, Official Trustee Receiver or Manager appointed by or under any order of a Court, the liability to pay tax is on such Court of Wards, Administrator, Official Trustee, Receiver or the Manager.

Liability on dissolution of firms and Association of persons.—Where the business carried on by a firm or an association of persons, other than a company, in respect of which tax is payable under the sales-tax Act, is discontinued or the association of persons is dissolved, the liability to pay tax rests on every person jointly and severally who at the time of such discontinuance or dissolution was a partner of such firm or member of such association.

Duties of a dealer

Declaration nominating manager.—Every dealer who is liable to pay tax under the Sales-tax Act be a Hindu undivided family, an association, a club, society, firm or company or a person who carries on business as guardian, trustee or otherwise on behalf of another person is bound within the prescribed period to send to the authority concerned a declaration in the prescribed manner stating the name of the person who shall be deemed to be, the manager of such dealer's business for the purposes of the Act. The declaration is revisable from time to time.

Information to be given on disposal or discontinuance.—A registered dealer who (a) sells or otherwise disposes of his business or any place of business (b) discontinues his business or changes his place of business (c)

changes the name or nature of his business (d) wants to make any addition to the class or classes of goods specified in his certificate of registration as being intended for re-sale by him is bound to inform the prescribed authority accordingly; and if such dealer dies, his legal representative shall in like manner inform the said authority.

The word "discontinues" means "cessation" and does not cover cases of succession. In *Karuppiiah Pillai, case* (1941) 9. I.T.R. 1, their Lordship held that the word 'discontinuance' does not include a case in which a business carried on by two partners was subsequently carried on by one of them. Their Lordships held that the case was one not of discontinuance but of succession. *Hariram Gopinath v. C.I.T.* (1944) 4 I.T.G. 71; *Mayappa Chettiar O R M M.S.P.S. v. C.I.T.* (1943) U.T.R. 247 observe: "To construe the provision as meaning the 'discontinuance' includes succession appears to do violence to plain language. In *C.I.T. Bombay v. P. E. Polson* (1942) I.L.R. 1942 Bom. 216 : 10, I.T.R. 52, the Bombay High Court considered that the word discontinued" by itself, and if not controlled by the context, would cover a discontinuance both by cession and disposal.

No collections of tax to be made except in accordance with law.—No registered dealer shall make any collection of tax except in accordance with such conditions and restrictions, if any, as may be prescribed.

Every person who collects any amount by way of tax under the Sales-tax Act is bound to pay over to the Government within such time and in such manner as may be prescribed, such collections as are in excess of tax paid by him for the period during which the collections were made or in case he has not paid any amount for the period in question, shall pay over to the Government all the amounts so collected by him; and in default of such payment, the amount may be recovered as if they were arrears of land revenue.

Gross and net turnover and Taxable turnover

It is a well established rule that the subject is not to be taxed without clear words for that purpose. The act is a fiscal enactment and as therefore to be constructed strictly and any ambiguity or doubt out of his interpretation has to be dissolved in the favour of the subject: *Ayodhya Prasad Suklal v. The Crown. Criminal Revision No. 760 of 1948.*

Definition of turnover. Turnover means the aggregate of the amount of sale prices and part of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period. Gross turnover is nothing but an aggregate of sale prices of taxable goods, tax free goods and tax exempted goods.

Determination of gross turnover.—The gross turnover of a dealer during any given period is determined by taking the aggregate of sale prices of goods sold during that period. It is a standard of measure to find out the liability of a dealer with regard to registration and payment of tax.

In the case of *Balabdas* it is held that gross turnover has to be ascertained by taking the aggregate amount of sale prices and part of sale prices received by a dealer with the inclusion of all amounts charged and realised as sales-tax by a dealer. (1951 N.L.J. 515 Rev.)

Actual practice.—In actual practice in assessment proceedings and the like, *turnover* is referred to as *gross turnover* in order to distinguish it from *taxable turnover*.

Forward contracts to be taxed on prescribed rates.—Turnover of forward contracts in which goods are not actually delivered are to be taxed at prescribed rates.

Determination of net turnover.—The net turnover is determined by deducting from a dealer's gross turnover during any period the following.—

1. Turnover during that period on.

- (a) Sale of goods-exempted from tax under sales-tax Act.
- (b) Sale in the State to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended by him for resale in the State, or use in the manufacture or production of any goods for sale or use in the execution of any contract and also containers and other material for the packing of such goods and such other sale as may be prescribed.
- (2) The amount of any debt proved to have been paid on which tax has been paid.
- (3) turnover during that period on the sale to any undertaking to supply electric energy to the public under licence or sanction granted.
- (4) sales to a registered dealer engaged in the business of raising coal or goods directly used in connection with the raising of coal.
- (5) sale of goods despatched to an address outside the State.
- (6) goods intended for use in the manufacture or processing of goods.
- (7) All amounts allowed as discount according to the regular practice of a dealer or with the terms of the contract or agreement.
- (8) All amounts allowed to purchasers in respect of goods returned by them, for which a dealer sells goods which are not in his stock and obtained from another dealer to accommodate his customer and all amounts realised by a dealer on account of the sale of his business
- (9) Prescribed percentage of the balance remaining after making the deductions admissible in the case of class of goods specified in the schedule given in the sales-tax Act and prescribed percentage in case of classes of goods specified in the schedule of the sales-tax Act.

Licence fees not to be deducted.—In determining the net turnover licence fees are not to be deducted if found included in the gross turnover. *Shiva Dayal Jaiswal v. Sales Tax Commissioner* (1951 A.L.J. 667)

Permissible deductions to be proved by relevant documents.—A dealer who wishes to claim a deduction from his gross turnover shall, on demand,

produce in respect of sale for which the deduction is claimed the copy or the counterfoil of the relevant cash receipt, bill or invoice, if any, and a certificate in writing by the purchasing dealer or by a responsible person duly authorised by the purchasing dealer in this behalf that the goods in question are required by such dealer either for re-sale or for use in the Manufacture of goods for sale or for the packing of such goods.

Deduction.—deduction cannot be refused on the ground that purchaser was untraceable and so declaration could not be verified by the purchaser as the seller cannot be held responsible for the movements of the purchaser: *Srinivas Jiwanram vs. The State of West Bengal* 1952 S.T.C. 301. nor the deductions can be disallowed on the ground that the assessee has transgressed the rules framed for the purpose of keeping in order the accounts, vouchers, counterfoils and receipts etc., in case the assessing officer has not adequate reasons to hold that the irregularities complained if have affected the genuineness of the documents produced by the assessee. It is true that assessee should not be encouraged to transgress the rules and irregularities in the keeping of accounts may justifiably lead the assessing officer to infer that the books of account or relevant documents produced by the assessee are taken and fabricated but penalty is provided for that and accounts cannot be discarded for that purpose *Kani Ram Janki Das vs. The State* 1952 S.T.C. 230.

Calculation of taxable turnover. Taxable turnover is calculated by deducting tax free goods and tax free sales from gross turnover.

Non-compliance with rules cannot make non-taxable goods taxable.—Where a dealer contended that a particular sum represented the sale of non-taxable goods but the cash memos that were produced in support of it contained entries of sales of both taxable and non-taxable goods and with regard to credit sales no bills were produced, it was held though under rules a dealer was to keep cash memos separate of taxable and non-taxable goods but non-compliance with a rule cannot make non-taxable goods taxable. The burden in such a case however is on the dealer to show that any portion of his gross turnover represents sales of non-taxable goods *Province of Bihar vs. Fokluram Rampershad*.

Exemptions on tax free goods allowable even though cash memos not issued.—Exemption on tax-free goods is to be allowed even though cash memos were not issued with which to check the account books of a dealer maintained in respect of controlled goods in small lots when the dealer believes that there is no need of issuing cash memos on petty sales *Ramashis Chawdhry vs. Province of Bihar* (1946) I.S.T.C. 148 (Board of Bihar).

Subject not to taxed without clear words.—Without showing that the value of goods imported was taxable quantum or more, the subject could not be taxed because total turnover exceeded the taxable quantum as subject is not to be taxed without clear words for that purpose *Ayodhya Prasad Sukhlal vs. The Crown* 1951 Nag 24.

Judgment to be exercised where rules not strictly complied with.—

It cannot be the intention of the Sales-tax Act that simply because an assessee has failed to produce the prescribed cash or credit memoes in time or has produced those which do not strictly conform to those prescribed under

the rules, the authority concerned should treat the whole gross turnover as taxable without exercising his judgment which means consideration of the nature of the assessee's business, any other reliable evidence that may be produced and such other factors as unfamiliarity with the provisions of the new Act the novelty of the requirements (convenient to the department but not so to the dealer) of the issue of separate memoes for tax-free and taxable goods though sold to the same customer and by the same cheque on the customer's banker. *Sarjoolal Ramchandralal vs. The Province of Bihar* (1946) I.S.T.C. 151

Single point taxations

Powers of the Government.—It is within the powers of the Government to declare by notification in the Official Gazettee that the turnover in respect of any goods or class of goods shall not be liable to tax except of such single point in the series of sales by successive dealers as may be prescribed or shall in respect of sale be taxed at such rate as may be specified if the sales relate to the following goods :—

1. Motor vehicles, including motor cars, motor taxi cabs, motor cycles and cycle combinations, motor scooters, motorettes, omnibuses, motor vans and motor lorries and chassis of motor vehicles. Also component parts of motor vehicles and articles (including rubber and motor tyres, tubes, batteries adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes other than as parts or accessories of motor vehicles)
2. Refrigerators and air conditioning plants.
3. (i) Wireless reception instruments and apparatus and component parts thereof, including all electric valves, accumulators, amplifiers and loud speakers which are not specially designed for purposes other than wireless reception.
(ii) Radiogramophones.
4. Cinematographic, photographic and other cameras, projectors and enlargers, films, plates, paper and cloth required for use therewith.
5. Scents and perfumes and other goods that may be made liable to single point taxation.

Incidence Of Taxation

[Under Sales-tax Acts]

ASSAM—

.....(1).—Subject to the provisions of this Act, and with effect from such date as the State Government may, by notification in the official Gazette, appoint, being not earlier than thirty days after the date of the said Notification, every dealer whose total gross turnover during the year immediately preceding the commencement of this Act amounted to or exceeded the sum of Rs. 7,500 (hereinafter referred to as "the taxable quantum"), shall be liable to pay tax under this Act on all sales effected after the date so notified ;

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into on or before the date so notified :

SALES TAX ACTS & ALLIED LAWS

(1) A. Nothing in sub-section (1) shall, except in cases covered by the first proviso to sub-section (12) of section 2 of this Act be deemed to render any dealer liable to tax on the sale of goods where such sale takes place :—

- (i) outside the State of Assam ;
- (ii) in the course of the import of the goods into, or export of the goods out of, the territory of India ; or
- (iii) in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the 1st April of the year during which his total gross turnover first amounts to or exceeds the taxable quantum:

Provided that such dealer shall not be liable to pay the tax under this Act during such year in respect of his gross turnover upto the taxable quantum specified in sub-section (1).

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his total gross turnover has failed to amount to or exceed the taxable quantum and, on the expiry of this period, his liability to pay tax under this Act shall cease.

(4) Every dealer whose liability to pay tax under this Act has ceased under the provisions of sub-section (3) shall again be liable to pay tax with effect from the 1st April of the year during which his total gross turnover again amounts to or exceeds the taxable quantum:

Provided that such dealer shall not be liable to pay the tax under this Act during such year in respect of his gross turnover up to the taxable quantum specified in sub-section (1).

Levy of Sales tax.—What is subject to levy of sales tax is the transaction of sale by the vendor, and not the use to which the vendee may put to it. Tobacco, when sold as tobacco leaf, is subject to a sales-tax. What is exempted is hooka tobacco and not tobacco, all tobacco being tobacco leaf. *Ramananda v. Commissioner of Taxes*, A.I.R., 1951 Pat. 24.

W. BENGAL.—

1941.—(1) With effect from such date as the State Government may, by in notification in the Official Gazette, appoint, being not earlier than thirty days after the date of the said notification every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the of this taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply, shall, if his gross turnover calculated from the commencement of any year exceeds the taxable quantum at any time within such year, be liable to pay tax under this

Act, on the expiry of two months from the date or on which such gross turnover first exceeds the taxable quantum, on all sales effected after such expiry.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax under this Act has ceased under the provisions of sub-section (3), shall, if his gross turnover calculated from the commencement of any year again exceeds the taxable quantum at any time within such year, be liable to pay such tax on the expiry of two months from the date on which such gross turnover against first exceeds the taxable quantum on all sales effected after such expiry.

(5) In this Act the expression "taxable quantum" means :—

- (a) in relation to say dealer who imports for sale any goods into West Bengal or manufactures or produces any goods for sale 10,000 rupees ; or
- (b) in relation to particular classes of dealers not falling within clause (a) such sum as may be prescribed or
- (c) in relation to any other dealer, 50,000 rupees.

Turnover, gross turnover, taxable quantum and taxable turnover. These four terms are most important in West Bengal Finance Sales Tax Act and therefore needs attention to explain them clearly before we proceed further. These expression of the terms are life souls in respect of the determination of liability to pay tax. It is necessary to have a thorough peep into the definitions of these terms to grasp the underlying principles of the "The Bengal Finance (Sales Tax) Act.

"*Turnover*" means the aggregate of the amount of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period" A. I. R. (Nagpur) 1951. page 25, para 7.

"*Gross turnover*" is nothing but an aggregate of sale prices (i) *tax-able goods* (ii) *tax free goods* and (ii) *tax exempted goods*, or more clearly to say; it is a sum total of taxable goods, tax free goods, and tax exempted sales. "*Gross turnover*" a standard of measure to find out the liability of a dealer with regard to registration and payment of tax. Minimum point of gross turnover from where the liability to pay tax arises is termed as "*taxable quantum*". Below the limit of taxable quantum, dealer enjoys lawful exemption. He is not subject to pay tax and apply for registration of certificate. But every dealer whose gross turnover during the year exceeds the taxable quantum, be liable to pay tax under this Act on the expiry of two months from the date on which such gross turnover exceeds the taxable quantum, on all sales effected after such expiry. It is made clear from the definition of "*taxable quantum*" that it is fixed with respect to various classes of dealers. Once it is found that a dealer falls in a particular category the taxable quantum for him is defined. The sum of rupees ten thousand is a taxable quantum in the case of importers, manufacturers and producers. In relation to any other

dealers is rupees fifty thousand. In A. I. R. 1951, Nagpur at page 24, it is held that a dealer is not liable to pay tax because his gross turnover does not exceed the taxable quantum.

"taxable turnover" When the liability of a dealer to pay tax sets in, the question arises how the tax is to be calculated on sales. The method is simple and clear. Sales tax is to be charged on taxable turnover and therefore taxable turnover can be arrived at by deducting tax free sales and tax free goods from the gross sales or gross turnover. The dealer is further required to deduct the amount of $4\frac{1}{2}\%$ on all taxable turnover to eliminate sales tax (realised from consumers) from sales. The deduction of $4\frac{1}{2}\%$ is made to avoid the taxing on tax itself. Now we shall explain the entire working of of taxation incidence through illustration to enable you to understand the same more clearly.

Illustration :—

Sales after taxable quantum.
Aggregate Sales.

| | | |
|--|---|------------|
| | Taxable goods. | Rs. 1,000 |
| | plus Tax-free goods. | Rs. 7,000 |
| | „ Tax-free sales. | Rs. 5,000 |
| | | <hr/> |
| | | Rs. 13,000 |
| | | <hr/> |
| Taxable turnover. | Gross turnover. | Rs. 13,000 |
| | less Tax free goods. | Rs. 7,000 |
| | „ Tax free sales. | Rs. 5,000 |
| | | <hr/> |
| | | Rs. 1,000 |
| | | <hr/> |
| Deduction of Sales tax (realised from consumers) to avoid taxing on tax itself | Taxable turnover less Sales tax @ $4\frac{1}{2}\%$ | Rs. 1,000 |
| | | Rs. 45 |
| | | <hr/> |
| | | Rs. 955 |
| | | <hr/> |

Dealer is to pay sales tax on.....Rs. 955/-only, being taxable turnover in real sense.

Section 5 (2) a (v) :—There is an important and interesting case of *Tobacco Manufacturers (India) Ltd. v. State of Bihar* (Miscellaneous Judicial case No. 140 of 1949) with regard to the provision of S 5(2) (a) (v) of the Bengal Finance (Sales Tax) Act, 1941. In this case the exemption is claimed in respect of goods despatched by assessee company to addressee outside Bihar in pursuance of an agreement between it and the Imperial Tobacco Co. Ltd.

On the facts, all their Lordships are agreed that the transactions between the two companies amount to sales, and that the sales were completed and the property in the goods had passed to Imperial Tobacco Company, before the despatch of the goods.

Das J. considered that the taxing Act, must be interpreted strictly in favour of the subject and therefore, the physical despatch of the goods by the assessee was "despatch" by him under S. (2) (v). **Sarjoo Prasad J.**, was of opinion that assessee was not entitled to exemption under S. 5 (2) (v) where

the sale is complete before the despatch of the goods, and the title is no longer in the vendor. On difference between two learned brothers Dass and Sarjoo Prasad J, it was referred to his Lordship Sinha J.

His Lordship Sinha J., held that the High Court is bound to accept the finding of Commissioner, that the goods were physically despatched by the assessee but the despatch was made by him on behalf of the vendee; in other words, the despatch must be held to be 'despatch' by the vendee and therefore, not entitled to exemption from sales tax: See *Tobacco Manufacturers (India) Ltd. v. The State A. I. R. 1951 Pat. 29.*

Since Art. 286 of Constitution of India coming into force on 26th January 1950, the decision in above case is no longer good law. In view of Exemption (1) of Art 286 clause 5(2) (a) (v) is irrelevant and repugnant to Expl. No. 2 defining sale.

BIHAR.—

(1) Subject to the provisions of sections 5, 6, 7 and 8 and with effect from the commencement of this Act, every dealer whose gross turnover during the year immediately preceding the date of such commencement on sales, which have taken place both in and outside Bihar exceeded Rs. 10,000 shall be liable to pay tax under the Act on sales which have taken place in Bihar on and from the date of such commencement :

Provided that the tax shall not be payable on the sale involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into by the dealer concerned on or before the 1st day of October, 1944.

(2) Subject as aforesaid every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the commencement of the quarter immediately following a period not exceeding twelve months during which his gross turnover on sales which have taken place both in and outside Bihar, first exceeded Rs. 10,000.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover, on sales which have taken place both in and outside Bihar has failed to exceed Rs. 10,000 and such further period after the date of such expiry as may be prescribed and on expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the commencement of the quarter immediately following a period not exceeding twelve months during which his gross turnover on sales which have taken place both in and outside Bihar again exceeds Rs. 10,000.

(5) Where a dealer liable to pay tax under this Act starts new business partnership firm and concern, whether by changing the constitution, style or the name of the previous business, partnership firm or concern or otherwise, either singly or jointly with any other person, such newly started business, partnership firm, or concern shall, notwithstanding anything contained in this section but always subject to the other provisions of this Act, be liable to pay tax on sale which have taken place in Bihar from the date of the commencement of the said business, partnership firm or concern, as the case may be.

BOMBAY.—

5. (1) Subject to the provisions of sections 6 and 7 and with effect from such date as the Provincial Government may, by notification in the *Official Gazette* appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act, in respect of sales or supplies of goods exceeds—

(a) in the case of a dealer who brings any goods into the Province of Bombay from any territory other than that notified by the Provincial Government in the *Official Gazette*, whether by land, water or air, Rs. 10,000, provided the value of goods is not less than Rs. 1,000 ;

(b) in the case of a manufacturer or processor Rs. 10,000, and

(c) in the case of any other dealer Rs. 30,000,

shall be liable to pay tax under this Act on his turnover in respect of sales or supplies of goods effected after the date so notified.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the 1st April of the year during which his turnover in respect of sales or supplies of goods exceeds the limits specified in sub-section (1) :

Provided that such dealer shall not be liable to pay the tax under this Act during such year in respect of his turnover up to the limits specified in sub-section (1).

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover in respect of sales or supplies of goods has failed to exceed the limits specified in sub-section (1) ; and such further period after the date of such expiry as may be prescribed and on the expiry of this latter period his liability to pay the tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the [1st April of the year during which] his gross turnover in respect of sales or supplies of goods again exceeds the limits specified in sub-section (1) :

Provided that such dealer shall not be liable to pay the tax under this Act during such year in respect of his turnover up to the limits specified in sub-section (1).

DELHI.—

(1) With effect from such date as the Chief Commissioner may, by notification in the *Official Gazette*, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply, shall, if his gross turnover calculated from the commencement of any year exceeds the taxable quantum at any time within such year, be liable to pay tax under this Act, on the expiry of two months from the date on which such gross turnover first exceeds the taxable quantum, on all sales effected after such expiry.

Explanation :— In this sub-section, and in sub-section (4) the express "period" means a period not exceeding twelve months from the commencement of a year

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax under this Act has ceased under the provisions of sub-section (3), shall, if his gross turnover calculated from the commencement of any year again exceeds the taxable quantum at any time within such year, be liable to pay such tax on the expiry of two months from the date on which such gross turnover again first exceeds the taxable quantum on all sales affected after such expiry.

(5) In this Act the expression "taxable quantum" means :—

(a) in relation to any dealer who imports for sale any goods into the State of Delhi or manufactures or produces any goods for sale, 10,000 rupees ; or

(b) in relation to particular classes of dealers not falling within clause

(a), such sum as may be prescribed ; or

(c) in relation to any other dealer, 30,000 rupees.

MADHYA BHARAT.—

(1) Subject to the provision of this Act, every dealer who is not liable to pay tax under sub-section (1) or whose turnover in the previous year in respect of sales or supplies of goods exceeds.

(a) in the case of a dealer who imports goods into Madhya Bharat, Rs. 5,000 (Rs. Five thousand) ;

(b) in the case of a manufacturer or processor, Rs. 5,000 (Rs. Five thousand), and

(c) in the case of any other Rs. 12,000 (Rs. Twelve thousand)

shall be liable to pay tax under this Act on his taxable turnover in respect of sales or supplies of goods effected from the 1st day of May, 1950:

Provided that a dealer who comes from outside Madhya Bharat and carries on business during a Mela shall be liable to pay tax under this Act if his average sales during the course of the Mela exceeds rupees 450 per month.

(2) A dealer, who had no business in the previous year, shall be liable to pay tax under this Act with effect from the date when his sales for the period from the 1st day of April are of such an amount as would render the proportionate sales upto 31st March liable to tax according to sub-clauses (a), (b) or (c) of sub-section (1):

Provided that in respect of assessment for the year 1950-51 the date of 1st of April mentioned in this sub-section shall be deemed to be the 1st of May, 1950.

MADHYA PRADESH.—

(1) Every dealer whose turnover during the year preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax in accordance with the provisions of this Act on all sales effected after the commencement of this Act.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the date of the expiry of two months after the month upto the end of which his turnover calculated from a date specified in sub-section (2a) exceeds the taxable quantum.

(2a) For the purposes of sub-section (2) the specified date shall be the date of :—

(i) the commencement of business in the case of a dealer who has been in business for less than twelve months; and

(ii) the commencement of the year in any other case.

(3) Every dealer who is liable to pay tax under this Act shall continue to be so liable until the expiry of a period of three consecutive years during each of which his turnover has not exceeded the taxable quantum and such further period thereafter as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall be liable to pay tax under this Act with effect from the date of the expiry of two months after the month up to the end of which from the commencement of the year his turnover in respect of sales of goods again exceeds the taxable quantum.

Note : "Taxable Quantum" means :—

(a) in relation to any dealer who himself manufactures or produces any goods for purposes of sale by himself, five thousand rupees ; or

(b) in relation to dealers not falling within clause (a), such sum or sums as may be prescribed ;

VINDHYA PRADESH.—

(1) Every dealer whose turnover during the year preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax in accordance with the provisions of this Act on all sales affected after the commencement of this Act.

SALES TAX PROCEDURE

77

Provided that the tax shall not be payable on sales made in the course of the execution of contract which is shown to the satisfaction of the commissioner to have been entered into before the commencement of this Act.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the date of the expiry of two months after the month upto the end of which his turnover calculated from a date specified in sub-section (2a) exceeds the taxable quantum.

(2a) For the purposes of sub-section (2) the specified date shall be the date of :—

(i) the commencement of business in the case of a dealer who has been in business for less than twelve months ; and

(ii) the commencement of the year in any other case.

(3) Every dealer who is liable to pay tax under this Act shall continue to be so liable until the expiry of a period of three consecutive years during each of which his turnover has not exceeded the taxable quantum and such further period thereafter as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall be liable to pay tax under this Act with effect from the date of the expiry of two months after the month upto the end of which from the commencement of the year his turnover in respect of sales of goods again exceeds the taxable quantum.

MADRAS.—

(1) Subject to the provisions of this Act.—

(a) every dealer shall pay for each year a tax on his total turnover for such year : and

(b) the tax shall be calculated at the rate of three pies for every rupee in such turnover :

Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding house or restaurant, the tax shall be calculated at the rate of four and a half pies for every rupee, if the turnover relating to those articles is not less than twenty five thousand rupees.

(2) Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed ; and the tax shall be paid by the dealer concerned on his turnover in each year

SALES TAX ACTS & ALLIED LAWS

relating to such goods, shall be in addition to the tax to which he is liable under sub-section (1) on his total turnover for the year :—

Description of the goods.

(1)

Rate of tax for every rupee in the turnover relating to such goods.

(2)

- | | | | |
|--|-----|-----|---------------|
| (i) Motor vehicles including motor cars, motor taxicabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries | ... | ... | } Six pies. |
| Chassis of motor vehicles | ... | ... | |
| Component parts of motor vehicles | ... | ... | |
| Articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes than as part or accessories of motor vehicles | ... | ... | |
| (ii) Refrigerators, air-conditioning plants, component parts, of refrigerators or air conditioning plants | ... | ... | } Six pies. |
| (iii) (a) Wireless reception instruments and apparatus and component parts thereof, including all electrical valves, accumulators, amplifiers and loudspeakers which are not specially designed for purposes other than wireless reception. | | | } Three pies. |
| (b) Radio gramophones "component parts of radio gramophones." | ... | ... | |
| (iv) (a) Cinematographic, photographic and other cameras, projectors and enlargers ; lenses and other parts of and accessories to such cameras, projectors and enlarger's ; and films, plates paper and cloth required for use therewith | | | } Three pies. |
| (b) Binoculars and opera glasses | ... | | |
| (vi) Any pen, pencil, or pen and pencil set, sold for twenty rupees or; more | | | Three pies. |
| (vii) All clocks, time-pieces and watches ; and parts thereof. | | | Three pies. |

(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed :

SALES TAX PROCEDURE

79

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly.

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :

Provided that—

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed ;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year as if his transactions in such year had been the same as in the previous year.]

Nature of Tax:—The tax imposed by the Madras General Sales Tax Act is not duty of excise in the cloak of tax on sales. The tax in fact is a tax which falls precisely within entry No. 48. of the Provincial list. The competing Entries No. 45 of the Federal List and No. 48 of the Provincial List may fairly be reconciled and that the Madras General Sales Tax Act is *intra vires* the Provincial Legislature so far it levies a tax on first sale in Madras on goods manufactured in India : *Governor-General in Council v. Province of Madras*, 12 B.R. 66 ; 47 Bom. L. 1. 629 ; A.I.R. 1945 P.C 98.

S 3 and 2 (i) In *Province of Madras v. Paidanna*, (1941) A.I.R. Mad. 913, it was held that the tax imposed by the Madras General Sales Tax Act is based on turnover ; it is, in fact, a tax on sales and that in so far as it imposes a tax on the first sales of goods manufactured or produced within the Province, it is *ultra vires* the Provincial Legislature. This means that in calculating a dealer's turnover for the purpose of the Act, the sale by him of goods which he has manufactured or produced must be excluded.

MYSORE.—

(1) Subject to the provisions of this Act—

(a) every dealer shall pay for each year a tax on his total turnover for such year ; and

(b) the tax shall be calculated at the rate of three pies for every rupee on such turnover.

Explanation.—In the case of textiles manufactured by mills and power-looms, however, the tax shall be calculated at a single point at the rate of six pies for every rupee on such turnover and levied when sold by a person who is the first dealer in Mysore.

(2) Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed ; and the tax shall be paid by the dealer concerned on his turnover in each year relating

SALES TAX ACTS & ALLIED LAWS

to such goods, and shall be in addition to the tax to which he is liable under sub-section (1) on his total turnover for the year :—

| Description of the goods. | Rate of tax for every rupee in the turnover relating to such goods. |
|--|---|
| (1) | (2) |
| (i) Motor vehicles including motor cars, motor taxicabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries Chassis of motor vehicles Component parts of motor vehicles Articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes than as parts or accessories of motor vehicles | } Six pies. |
| (ii) Refrigerators and air-conditioning plants. | Six pies. |
| (iii) (a) Wireless reception instruments and apparatus and component parts thereof, including all electrical valves, accumulators, amplifiers and loud-speakers which are not specially designed for purposes other than wireless reception. (b) Radio gramophones. | } Three pies. |
| (iv) (a) Cinematographic, photographic and other cameras, projectors and enlargers, lenses and other parts of and accessories to such cameras, projectors and enlargers ; and films, plates paper and cloth required for use therewith (b) Binoculars and opera glasses | } Three pies. |
| (v) All electrical goods, instrument, and appliances, including fans, and lighting bulbs, electrical earthen ware and porcelain, and all other accessories | } Three pies. |
| (vi) Any pen, pencil, or pen and pencil set, sold for twenty rupees or more. | Three pies. |
| (vii) All clocks, time-pieces and watches ; and parts thereof. | Three pies. |

(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with the rules contained in the Schedule to this Act :

Provided that the Government shall have the power to vary any part of the Schedule after duly notifying changes in the Official Gazette.

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :

Provided that —

(i) in respect of the same transaction of sale, buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed ;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year as if his transactions in such year has been the same as in the previous year.

ORISSA.—

(1) Subject to the provisions of sections 5, 6, 7 and 8 and with effect from such date, as the State Government may, by notification, in the Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover on sales which have taken place in Orissa during the year immediately preceding the commencement of this Act exceeded Rs. 10,000 shall be liable to pay tax under the Act on Sales affected after the date so notified:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of Collector to have been entered into by the dealer concerned on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act on sales which have taken place in Orissa with effect from the quarter immediately following a period not exceeding twelve months during which his gross turnover on sales which have taken place in Orissa first exceeded Rs. 10,000.

(3) Every dealer who has become liable to pay tax under this act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover on sales which have taken place in Orissa has failed to exceed Rs. 10,000 and such further period after the date of the said expiry as may be prescribed and his liability to pay tax under this Act shall cease on the expiry of the prescribed period:

Provided that every dealer who has been liable to pay tax and whose gross turnover on sales which have taken place in Orissa did not exceed Rs. 10,000 in the year 1949-50 shall cease to be liable to pay tax from such date as may be notified by the State Government.

Provided further that in calculating a period of three consecutive years the part of a year during which a dealer became first or again liable shall be excluded.

(4) Every dealer who has ceased to be liable to pay tax under sub-section (3) shall again be liable to pay tax under this Act with effect from the quarter immediately following a period not exceeding twelve months during which his gross turnover on sales which have taken place in Orissa again exceeds Rs. 10,000.

(5) Where a registered dealer starts a new business, partnership, firm or concern, whether by changing the constitution style or the name of the previous business, partnership, firm or concern or otherwise, either singly or jointly with any other person, such newly started business, partnership, firm or concern shall, notwithstanding anything contained in this Section but always subject to the other provision of this Act, be liable to pay tax on sales which have taken place in Orissa from the date of commencement of the said business, partnership, firm or concern, as the case may be.

E. PUNJAB.—

(1) Subject to the provisions of sections 5, and 6 every dealer except one dealing exclusively in goods declared tax-free under Section (6) whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered in to before the commencement of the Act.

Every dealer, to whom sub-section (1) does not apply, or who does not deal exclusively in goods declared to be tax free under section 6, shall be liable to pay tax under this Act with effect from the date on which his gross turnover first exceeds the taxable quantum.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer, whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the date on which his gross turnover first exceeds the taxable quantum.

(5) In this Act the expression "taxable quantum" means:—

- (a) in relation to any dealer who imports for sale or use in manufacturing or processing any goods in Punjab.
- (b) in the relation to a co-operative Society, registered under the Co-operative Societies Act, 1912, 20,000 rupees.
- (c) in relation to any dealer, who himself manufactures or produces any goods for sale, 10,000 rupees.
- (d) in relation to any particular classes of dealer not falling within clauses (a), (b) and (c) such sum as may be prescribed ; or
- (e) in relation to any other dealer, 50,000 rupees. Provided that the taxable turnover every year of a dealer a tax at such rates as the State Government may by notification direct.

SAURASHTRA.—

(1) Subject to the provisions of section 6 and with effect from such date as the Government may, by notification in the Official Gazette appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Ordinance, in respect of sales or supplies of goods exceeds:—

- (a) in the case of a dealer who brings any goods into the United State of Saurashtra from any territory other than that notified by the Government in the Official Gazette whether by land, water or air, Rs. 10,000/- provided value of such goods is not less than 1,000/-,
- (b) in the case of a manufacturer or processor Rs. 10,000/-,
- (c) in the case of any other dealer, Rs. 15,000/-,

shall be liable to pay tax under this Ordinance on his turnover in respect of sales or supplies of goods effected after the date so notified.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Ordinance with effect from the 1st April of the year during which his turnover in respect of sales or supplies of goods exceeds the limit specified in sub-section (1):

Provided that such dealer shall not be liable to pay the tax under this Ordinance during such year in respect of his turnover upto limits specified in sub-section (1).

(3) Every dealer who has become liable to pay tax under this Ordinance shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover in respect of sales or supplies of goods has failed to exceed the limits specified in sub-section (1), and such further period after the date of such expiry as may be prescribed and on the expiry of this latter period his liability to pay the tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Ordinance with effect from the 1st April of the year during which his gross turnover in respect of sales or supplies of goods again exceeds the limits specified in sub-section (1):

Provided that such dealer shall not be liable to pay the tax under this Ordinance during such year in respect of its turnover upto the limits specified in sub-section (1):

UTTAR PRADESH.—

Subject to the provisions of this Act, every dealer shall pay on turnover in each assessment year a tax at the rate of 3 pies a rupee:

Provided that—

- (i) the State Government may, by notification in the *Official Gazette*, reduce the rate of tax on the turnover of any dealer or class of dealers or on the turnover in respect of any goods or class of goods;
- (ii) a dealer whose turnover in the previous year is less than Rs. 12,000 or such larger amount as may be prescribed shall not be liable to pay the tax under this Act for the assessment year;
- (iii) whenever any dealer is required to submit return or returns under the first proviso to section 7, the next preceding proviso to this section shall apply as if, for the words "previous year" occurring therein the words "assessment year" had been substituted;

Provided further that if the amount prescribed under clause (ii) of the preceding proviso is reduced during an assessment year, the tax payable as aforesaid by a dealer shall be computed as follows : that is to say,

- (a) on the turnover relateable to the period previous to the reduction, as though the amount had not been reduced, and
- (b) on the remainder, as though the reduced amount had been in force on all material dates.

3A. Single point Taxation.—(1) Notwithstanding anything contained in section 3, the State Government may, by notification in the *Official Gazette*, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except of such single point in the series of sales by successive dealer as the State Government may specify.

(2) If the State Government makes a declaration under sub-section (1) of this section it may further declare that the turnover of the dealer, who is liable to pay tax on the sale of such goods, shall, in respect of such sale, be taxed at

such rate as may be specified not exceeding one anna per rupee if the sale relates to goods specified below:

- (i) Motor vehicles including motor cars, motor taxicabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omni-buses, motor vans and motor lorries.

Chassis of motor vehicles.

Component parts of motor vehicles.

Articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes than as parts or accessories of motor vehicles.

- (ii) Refrigerators and air-conditioning plants.

- (iii) (a) Wireless reception instruments and apparatus and component parts thereof, including all electrical valves, accumulators, amplifiers and loud-speakers which are not specially designed for purposes other than wireless reception.
(b) Radiogramophones.

- (iv) Cinematographic, photographic and other cameras, projectors and enlargers and films, plates, paper and cloth required for use therewith.

- (v) Scents and perfumes,
and nine pies per rupee if it relates to any other goods.

3-B. Tax on the turnover of forward contracts.—Notwithstanding anything contained in section 3, the turnover of any dealer in respect of transactions of forward contracts, in which goods are not actually delivered, shall be taxed at a rate not exceeding rupees two per unit as may be prescribed.

UNITED STATES OF TRAVANCORE & COCHIN.—

Section 3. (1) Subject to the provisions of this Act:

- (a) every dealer shall pay for such year a tax on his total turnover for such year; and
- (b) the tax shall be calculated at the rate of three pies for every Indian rupee in such turnover.

(2) Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed; and the tax shall be paid by the dealer concerned on his turnover in each year relating to such goods, shall be in addition to the tax to which he is liable under subsection (1) on his total turnover for the year;

| Description of the goods. | Rate of tax for every Indian rupee in the turnover relating to such goods. |
|---|--|
| 1 | 2 |
| (i) Motor vehicles including motor cars, motor taxi cars, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries ... Chassis of motor vehicles ... Component parts of motor vehicles ... Articles (including rubber and other tyers and tubes and batteries adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes than as parts or accessories of motor vehicles) ... | Six pies. |
| (ii) Refrigerators and air-conditioning plants ... | Six pies |
| (iii) (a) Wireless reception instruments and apparatus and component parts thereof including all electrical valves, accumulators, amplifiers and loudspeakers which are not specially designed for purposes other than wireless reception ... (b) Radio gramophones ... | Three pies. |
| (iv) (a) Cinematographic, photographic and other cameras, projectors and enlargers; lenses and other parts of and accessories to such cameras, projectors and enlargers; and films, plates, paper and cloth required for use therewith ... (b) Binoculars and opera glasses ... | Three pies. |
| (v) All electrical goods, instruments, apparatus and appliances including fans and lighting bulbs, electrical, earthenware and porcelain, and all other accessories ... | Three pies. |
| (vi) Any pen, pencil, or pen and pencil set, sold for twenty rupees or more... | Three pies, |
| (vii) All clocks, time-pieces and watches and parts thereof ... | Three pies. |
| (viii) Petrol ... | Nine pies. |

(3) A dealer whose total turnover in any year is less than ten thousand Indian rupees shall not be liable to pay any tax for that under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed.

(5) The taxes under sub-section (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :—

Provided that—

- (i) in respect of the same transaction of sale, the buyer or the seller but not both, as determined by such rules as may be prescribed, shall be taxed;
- (ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year as if his transactions in such year had been the same as in the previous year.

Registration

Compulsory registration :—No dealer shall, while being liable to pay tax under the Sales tax Act of any State carry on business in the State unless he has been registered and possesses a certificate of registration. The application for registration should be made within the prescribed time to the prescribed authority and certificate of registration obtained when so required under law.

Voluntary registration :—Any dealer whose total gross turnover during a year amounts to or exceeds the taxable quantum may also apply for registration even if he may not be liable to tax under the law in force regarding sales tax to be paid by every dealer whose gross turnover during the year immediately preceding the commencement of the Sales-tax Act in any State exceeded the taxable quantum on all sales effected after the notified date.

Registration certificate not to cover all businesses:—For the purposes of taxing statute, the registration certificate issued to a company with its place of business at Muzaffarpur should not be taken as registration certificate to the company with all its places of business inside and outside Bihar. By taking such a view the provisions of section 7 of Bihar Sales-tax Acts (which corresponds to section 9 of the Bihar Sales tax Act of 1947) and the rules made thereunder would be rendered nugatory. *Tobacco Manufacturers Ltd. v. The State A. I. R. 1951 Pat. 29.*

The expression "registered dealer" in the taxing statute has an artificial statutory meaning, a meaning which must be consistent with the scheme and purposes of the taxing statute. For the purpose of the taxing statute, the registration certificate issued to the company with its place of business at Muzaffarpur should not be taken as a registration certificate to the company

with all its places of business inside and outside Bihar. That would render nugatory the provisions of Section 7 of Bihar Sales Tax Acts of 1944 (which is equivalent to S. 9 of the Bihar Sales Tax Act, 1947) and the rules made under the taxing statute.

See Tobacco Manufacturers (India) Ltd. v. The State of Bihar (Miscellaneous Judicial Case No. 140 of 1949.)

Dispensing chemist dealing in patent medicines to apply for registration :—A dispensing chemist dealing in patent medicines and medical sundries is a dealer as he is engaged in the business of selling & supplying goods and the finished articles manufactured or produced or brought into being by compounding the drugs according to the prescriptions of the physician and that he himself manufactures or produces or in other words brings into that finished article as a commercial commodity and so the business is that of selling or supplying the commodity so manufactured or produced by him and its sale being of taxable quantum and liable to tax, he is bound to apply for and take out registration certificate. *North Bengal Stores Ltd. v. Board of Rev.* 1 S. T. C. 157.

Registration not necessary for imported goods when negligible :—When the turnover for the imported goods is negligible or does not exceed taxable quantum and so long as the total turnover does not exceed specified amount made taxable under the Sales-tax Act, registration certificate is not needed. *Ayodhya Prasad Sukhlal v. The Crown.* Salesman working under the control of his master and doing business need not obtain registration certificate and cannot be held guilty for failure to obtain it. *Abdul Samad Khan v. Rex.* (1948) 1 S. T. C. 175.

Dealer to pay tax on unsold stock when registration cancelled :—When the certificate of registration is cancelled, the dealer is liable to pay tax on his unsold stock of goods at the time of cancellation of the certificate.

Certificate of Registration :—A dealer is entitled to be granted certificate of registration though he actually pays no tax on any part of his turnover. Where a dealer did not pay any tax for the quarters ending 31st December, 1944 and 31st March, 1945 because major portion of the turnover represented goods despatched by the dealer to an address outside Bihar and no tax was paid on the sale made inside the State as well because the sales were made to registered dealers of goods and were intended for resale, it was held that in the absence of any finding that the figures given in the return were false or fabricated, the dealer was entitled to be registered as such and to be granted a certificate of registration as provided by section 7 (8) of Bihar Sales-tax Act, *Fatehchand Murli Dhar v. The State* 1952 S. T. C. 293.

Returns and payment of tax.

Returns to be furnished by registered dealers.—Every registered dealer and such dealers as may be required so to do by the competent authority by notice served in the prescribed manner shall furnish such returns by such dates and to such authority as may be prescribed.

Tax to be paid according to the return submitted.—Before any registered dealer furnishes the return required under law, he shall pay in the prescribed manner into Government treasury or Reserve Bank of India the

full amount of tax due from him under the Sales-tax Act of the State according to such return and shall furnish along with the return a receipt from such treasury or bank showing the payment of such amount.

Tax to be paid in prescribed manner and at specified intervals.—Tax payable under the Sales tax Act of a State shall be paid in the manner and at such intervals as may be prescribed by the State.

Revised returns on detection of error or omission.—If any dealer discovers any omission or other error in any return furnished by him he may at any time before the date prescribed for the furnishing of next return by him furnish a revised return ; and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment in the manner prescribed under law for the extra amount.

Payment of tax without reasonable cause makes a dealer liable to penalty.—Where any registered dealer without any reasonable cause to make payment of the tax or extra amount of tax due from him according to the return or revised return, the competent authority has power to direct the dealer to pay penalty.

Competent authority can extend time and allow payment by instalments.—It is within the discretion of the competent authority to extend time for payment of tax due or allow such dealer to pay tax due and the penalty, if any, by instalments.

Tax unpaid recoverable as arrears of land revenue.—The amount of tax together with penalty remaining unpaid after the date specified in the notice issued shall be recoverable as an arrear of land revenue.

Notice on one partner of a firm another not liable.—Where a firm consisting of two partners was assessed to tax and demand notice issued in the name of the firm but served on one of its partners, another partner was not held guilty so as to make him liable to penalty. *K. Jacob Nadar v. The Public Prosecutor* I.T. 1951 414.

Where payment was made by an assessee by uncrossed cheques and the peon of the Sales-tax department got the cheque cashed and misappropriated the amount and accounts bore no evidence of payment and the assessee was prosecuted for non-payment of sales-tax due, it was held that the assessee could not be prosecuted as the sending of the cheque amounted to payment in law and the fraud committed did not alter its nature in the absence of proof that assessee was a party to the fraud. *Sivaram Pilai & Another* in re:

Demand notice for Sales-tax due by the firm, if served on one partner, is sufficient notice to the firm and all partners who are jointly and severally liable for payment and so other partner could also be proceeded against. (A.I.R. 1948 Mad. 104).

Assessment of Taxes

Scope : The object of the sales tax Act is to impose a general tax on the sale of goods.

Assessment on submission of return.—If the taxing officer under the Sales tax Act of different States is satisfied that the return furnished by the dealer is correct and complete in respect of any period, he shall assess the dealer and determine the tax payable by him on the basis of such return.

Notice necessary when return incomplete or incorrect.—When the tax-officer is not satisfied that a return furnished is correct or complete he has to serve a notice on the dealer requiring him, on the date and at the hour and place specified therein either to attend in person or to produce or cause to be produced any evidence on which he may rely in support of his return.

Notice.—Assessment is illegal without a notice when the assessee files a return but is not accepted *Nirmal Kumar Nowlakshya v. C.I.T.* 1925 Cal. 175; 1 I. T. C. 393. The issue of notice is mandatory. The number of notices that may be issued is not restricted. If a notice is issued calling on the assessee to give evidence in support of the return, reasonable time ought to be given to the assessee to do so. A notice letter of telegram granting adjournment is not notice even though sent in reply to a request seeking adjournment upon a notice.

Waiver.—When an assessee appears in person on summons after presenting the return and is examined on various points by the tax officer to elucidate those and the assessee does not do so nor asks for further notice to produce evidence, it does not amount to waiver and issue of fresh notice to produce evidence is necessary. *Nirmal Kumar v. Secretary of State*, 1. I. T. C. 393.

Evidence.—Evidence cannot obviously be confined to direct evidence but is comprehensive enough to cover circumstantial evidence *Paras Das Munna Lal v. C. I. T.* (1937 I. T. R. 523-26)

Onus.—An assessee who produces account books which may be cooked up shifts the burden of proof to the tax officer to prove that the accounts are unreliable and as such is in a position of immense advantage over an honest assessee who fails to produce other evidence when his account books are held unreliable. But in such a case it is open to the tax officer and is made inevitable by the nature of his work to act on private and confidential information without disclosing the names of the informants. In case of commission agents the onus is on him to prove that he is not a dealer. Fails to submit a return does not mean fails with reasonable cause.

Non-compliance with notice and best judgment assessment.—The best judgment assessments are to be made in case (1) the dealer fails to make a return required to be furnished under different sections of the Sales-tax Acts of different States (2) or having submitted the return fails to comply with all the terms of the notice issued to verify its correctness (3) or if upon information which has come into his possession, the commissioner is satisfied that any dealer who has been liable to pay tax in respect of any period has failed to get himself registered (4) or has not regularly employed any method of accounting or if the method employed is such that, in the opinion of the Commissioner, assessment cannot be properly be made on the basis thereof.

In the *best judgment assessment*, the officer making the assessments should not act dishonestly or vindictively or capriciously and must exercise his judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he can take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of previous returns or assessments of the assessee and also all other matter which he thinks will assist him in arriving at a fair and proper estimate. Though there must necessarily be guess work in the matter but it must be honest guess work. *C. I. T. v. Laxminarain Badridas*, 1937 P. C. 13=1937 I. T. R. 170.

When the tax officer shall make the assessment to the best of his judgment, it means that he must make it according to the rules of reason and justice and not according to private opinion; according to law and not humour and that is not to be arbitrary, vague and fanciful but legal and regular. *Chhattyar Firm v. C.I.T.* 4 I. T. C. 183.=1930 A.I.R. Rang. 33.

The best judgment assessments ought not to be penal in any case and ought to proceed on some date. *Chattyar Firm v. C.I.T.* 1930 A.I.R. Rang. 33.

To the best of his judgment only means as best as he can in the circumstances. Exhypothesis a best judgment assessment must be to some extent arbitrary because it is a mere estimate and material being inadequate. But it must be made bonafides and to the best of his judgment which means as best as he can in the circumstances. *Abdul Baree Chaudhari v. C.I.T.* 5 I.T.C. 352.

Best Judgment assessment.—

Where the assessing authority issued a notice, directing the applicants to attend in person or by an agent at the office of Commercial Tax Officer and there to produce, or cause there to be produced, at the time mentioned in the notice for the purpose of assessment, together with any objection which the applicant might wish to prefer and any evidence which they might wish to adduce in support thereof. The notice further intimated to the applicant that in the event of their failure to comply with the notice, the Tax Officer would proceed to assess under S. 11 of the Bengal Finance (Sales Tax) Act, 1941, to the best of his judgment without further reference to them. Applicant's lawyer represented to the Tax Officer that they were not in a position to comply with the requirements of the notice, that their books of account had been looted and destroyed during the communal disturbances in Calcutta. The Assistant Commissioner of Commercial Taxes assessed the dealers to the best of his judgment by his order. He estimated the gross turnover of the applicants at Rs. 20 lacks per quarter and the taxable turnover at ten per cent of the gross turnover. Ten per cent has been reduced to 7.5 per cent in appeal. The applicant referred the case to High Court on the point that Rule 54 of the Bengal Sales Tax Rules which says that in arriving at the best judgment assessment the authorities have to consider any objection made by the dealer and any evidence produced in support thereof and they are further to briefly record the reasons on which they base their orders. It was held by lordship that there is no doubt that the applicants were given full opportunity to present their case before the authorities and the reasons on which the authorities have come to their findings have been given. It may be, the authorities are wrong as to the figure which they have come to. But that does not give jurisdiction to revise their order. It may be that the authorities were wrong, but that does not mean that they were capricious in the finding they made. The authorities did apply their mind and tried their best to come to a correct conclusion. Even if they were wrong, the applicants cannot be helped in any way. Reference may be made to *Jagdish Prasad Pannalal v. Member, Board of Revenue, West Bengal* (1951) 55 C.W.N. 244.

There is no jurisdiction of High Court to interfere in best judgment assessment under S. 11 of the Bengal Finance Sales Tax Act, 1941.

It was possible that commercial tax officer were wrong but this did not mean they were capricious in the finding they made. *Jagdish Prasad Pannalal v. Member, Board of Revenue, W. Bengal* 55 C.W.N. 343.

SALES TAX ACTS & ALLIED LAWS

Onus of proof.—When there is evidence on which Commercial Tax Officer can base a finding that the assessee's books are unreliable and consequently rejects them and the assessee fails to produce other evidence, the Commercial Tax Officer can go ahead to assess to the *best of his judgment*. An assessee who has no such scruples but produces accounts which in the common phrase are "cooked" is in a position of immense advantage over his more honest rival. He can then put the Commercial Tax Officer to the proof of his case. The burden shifts from the assessee to the Commercial Tax Officer, but at the same time the course of natural justice is observed, when the assessee is informed of the substance of the information on which the Commercial Tax Officer proposes to act and of the case against him and is given a reasonable opportunity to meet the case. It is open to Commercial Tax Officer, and that the nature of his work makes it inevitable, to act on private and confidential information in a work which is of a strictly private and confidential nature without disclosing the names of informants. See in 1940 I.T.R. Page 76 in first para.

Assessment of minor and reconstituted firms.—Where there is a change in the constitution of a firm or the business of a firm is discontinued, all the partners or owners of the firm shall have to give notice of the fact to the assessing authority within a specified time of such change or discontinuance.

In the case of minors the assessment shall have to be made on the guardian, trustee or agent so such minor or incapacitated person carrying on business on behalf and for the benefit of such minor or incapacitated person.

In the case of business owned by a dealer whose estate or any portion thereof is under the control Court of Wards, the Administrator General, the Official Trustee or any Receiver or manager including any person whatever his designation who in fact manages the business on behalf of the dealer appointed by him or under any order of a Court, the tax is leviable and recoverable from them.

Assessment and penalty for failure of registration.—If upon information which has come into his possession, the Commissioner is satisfied that the default was made by the dealer without reasonable cause in getting himself registered, he is authorised to direct that the dealer shall pay by way of penalty in addition to the amount of the tax so assessed a sum not exceeding one and a half times that amount:

Cancellation of assessments.—Where a dealer satisfies the tax officer within a specified period under the various Acts from the date of issue of a demand notice that he was prevented by sufficient cause from making the return and that he did not receive the notice issued or that he had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice, he shall cancel the assessment made and make a fresh one.

Rectification of assessment.—The authority which made an assessment or passed an order on appeal or revision in respect thereof, may at any time within a specified period under various Sales tax Acts from the date of such assessments or order or of its own motion, rectify any mistake apparent from the record of the case and shall within the like period, rectify any such mistake as has been brought to its notice by a dealer.

Limitation for assessments.—No proceeding for the assessment of the tax due from a dealer in respect of any period shall be initiated later than the specified time under the various Sales-tax Acts from the expiry of such period or later than the specified time from the date of the disposal of the appeal, revision, review or reference directing fresh assessment.

Turnover escaping assessment.—If in consequence of information which has come into his possession, the tax officer is satisfied that any turnover in respect of sales or supplies of any goods chargeable to tax under the Sales-tax Acts has escaped assessment in any year or has been under assessed or assessed at a lower rate or any deduction have been wrongly made therefrom, he may in any case where he has reason to believe that the dealer has concealed the particulars of such sales or supplies or deliberately furnished incorrect returns, serve on the dealer liable to pay the tax in respect of such turnover, a notice and may proceed to assess or reassess the amount of tax from such dealer.

Licence fee etc. escaping assessment.—If the licence fee, registration fee or exemption fee has escaped levy or has been assessed at too low a rate in any year, the assessing authority within a specified period shall assess the tax payable on the turnover which has escaped levy of the correct amount of the licence fee, registration fee or exemption fee, after issuing a notice to the dealer and after making such inquiry as is considered necessary.

Assessment not to be questioned in prosecutions.—If the levy of any fee or other amount or the liability of any person to pay any tax, fee or other amount is not validly assessed, its validity cannot be questioned in any Criminal Court in any prosecution or other proceedings under the Sales-tax Act or otherwise.

Validity of Assessment.—The remedy allowed under S. 20 (b) of Mysore Sales Tax Act for the enforcement of payment in a Criminal Court is of a summary nature and it is proved to the satisfaction of the Court that the assessee has become liable under the Act for payment. It is not the province of a Criminal Court to enter into an elaborate enquiry about the correctness of the levy or the validity thereof. The Criminal Courts have no jurisdiction to question the validity of the tax: *G.V. Rama Iyer and others v. State of Mysore*, A.I.R. 1951. Mysore 70.

Assessment—Proof of.—The prosecution has affirmed that the assessee petitioner has been assessed on certain date and the demand notice has been served on him. The fact of service has been admitted by the accused. These facts are sufficient to establish *prima facie* that there was an assessment and demand has been made which is not complied with, in which case the burden that there was no assessment or demand has not there been made otherwise shifts on to the accused. *Thimmina Katte Kotrappa v. Asstt. Sales Tax Officer*, 1951. A.I.R. Mysore 37.

Suit not competent to set aside or modify assessments.—No suit or other proceedings shall, except as expressly provided in the Sales-tax, be instituted in any Court to set aside or modify any assessment made.

Assessment no bar to penalties and prosecutions.—Any assessment made under sales-tax Act shall be without prejudice to any prosecutions or penalty instituted or imposed under the provisions of the Act.

Election of assessment year & method of assessment.—Election of assessment year can be made once. Any dealer may elect to submit returns of his turnover of the previous year. A dealer who does not carry on business during whole of the previous year can elect to submit his returns of the assessment year. But when the election is once signified the option cannot again be exercised so as to vary the basis of assessment unless he is permitted to do so by the tax authority under the rule framed under the Sales-tax Acts.

Election of the method of assessment is open when net turnover exceeds the specified amount. But when the net turnover of a dealer exceeds specified amount, the excess of tax on final assessment shall at his option be credited towards the tax or taxes, if any, payable by him for succeeding months or be refunded to him. This method can be taken advantage of only when the turnover exceeds the specified amount, under the rules framed.

Assessment of Taxes [Under Sales Tax Acts]

ASSAM.—

Section 17. (1) If the Commissioner is satisfied that a return furnished by the dealer under section 16 in respect of any period is correct and complete, he shall, by an order in writing, assess the dealer and determine the tax payable by him on the basis of such return.

(2) If the Commissioner is not satisfied that a return furnished under section 16 is correct and complete, he shall serve on dealer a notice requiring him, on the date, and at the hour and place specified therein, either to attend in person or to produce or cause to be produced any evidence on which he may reply in support of his return.

(3) On the day specified in the notice under sub-section (2) or as soon afterwards as may be, the Commissioner, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require, shall, by an order in writing, assess the dealer and determine the tax payable by him on such assessment.

(4) If a dealer fails to make a return as required by sub-section (1) or sub-section (2) of section 16, as the case may be, or having made the return fails to comply with all the terms of the notice issued under sub-section (2) of this section the Commissioner shall, by an order in writing, assess to the best of his judgment the dealer, and determine the tax payable by him on the basis of such assessment :

Provided that before making assessment the Commissioner may allow the dealer such further time as he thinks fit to make the return or to comply with the terms of the notice issued under sub-section (2) of this section.

BENGAL.—

Section 11. (1) If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall, within eighteen months after the expiry of such period, proceed in such manner as may be prescribed to assess to the *best of his judgment* the amount of the tax due from the dealer and in making such assessment shall give the dealer a *reasonable opportunity* of being heard ; and in the case of failure by a registered dealer to submit in respect of any period a return accompanied by a receipt from the Government treasury or the Reserve Bank

of India as required under sub-section (3) of section 10 by the prescribed date, the Commissioner may, if he is satisfied that the default was made without *reasonable cause*, direct that the dealer shall pay by way of penalty in addition to the amount of the tax so assessed a sum not exceeding *one and a half times* that amount.

(2) If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax in respect of any period has failed to get himself registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the *best of the judgment* the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer a reasonable opportunity of being heard; and the Commissioner may if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding *one and a half times* that amount.

(2a) No assessment under sub-section (1) shall be made after the expiry of four years and no assessment under sub-section (2) shall be made after the expiry of six years from the end of the year in respect of which or part of which the assessment is made:

Provided that where any proceedings for assessment under sub-section (1) or sub-section (2) are pending at the commencement of the Bengal Finance (Sales Tax) West Bengal (Amendment) Act, 1920, such assessment may be made at any time within four years or six years respectively of the date of such commencement.

(3) The amount of tax—

- (a) due where the returns are furnished without receipt showing full payment thereof, or
- (b) assessed under sub-section (1), less the sum, if any, already paid by the dealer in respect of the said period, or
- (c) assessed under sub-section (2),

shall, together with any penalty that may be directed to be paid under any of provisions of this section, be paid by the dealer into a Government Treasury or the Reserve Bank of India by such date as may specified in a notice issued by the Commissioner for this purpose and the date to be so specified shall be not be less than thirty days from the date of service of such notice:

Provided that the Commissioner may, in respect of any particular dealer and for reasons to be recorded in writing, extend the date of such payment or allow such dealer to pay the tax due and the penalty (if any) by instalments.

(4) Any amount of tax or penalty which remains unpaid after the date specified in the said notice shall be recoverable as an arrear of land-revenue.

(5) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence against this Act.

BIHAR.—

Section 13 (1) If the Commissioner is satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

- (2) (a) If the Commissioner is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he *shall serve* on such dealer a notice in the prescribed manner requiring him on a date and at a place to be specified therein, either to attend in person or to produce or to cause to be produced there *any evidence* on which such dealer may rely in support of such returns.
- (b) On the day specified in the notice or as soon as afterwards as may be, the Commissioner, after hearing *such evidence* as the dealer may produce, and *such other evidence* as the Commissioner may require on specified points, shall assess the amount of tax due from the dealer.
- (3) If a registered dealer, having furnished returns in respect of a period, fails to comply with all the terms of a notice issued under sub-section (2), the Commissioner shall assess to the *best of his judgment*, the amount of tax due from the dealer.
- (4) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any due from the dealer.
- (5) If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, "or having applied for registration, failed to furnish any particulars or information required by the prescribed authority for the purposes of section 9" the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any due from the dealer in respect of such period and subsequent periods and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and half times that amount.

(6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act :

Provided that no proceeding for assessment of the tax due from a dealer in respect of any period shall be initiated later than four years from the expiry of such period or later than two years from the date of disposal of the appeal, revision, review or reference directing fresh assessment.

S. 13 (2) of Bihar Sales Tax Act 1947 is analogous to S. 23 (2) of Income Tax Act 1922.

Illegality of Assessment.—

Where the assessee files a return, which is not accepted, assessment is illegal without issue of a notice under S. 13 (2) (a) of Bihar Sales Tax Act, 1947, the case indicating a very important point of law. *Nirmal Kumar Nowlakshya v. C.I.T.* 1925 Cal. 175=1. I.T.C. 393.

Mandatory.—

Issue of notice under S. 13 (2) (a) is mandatory, the words used being 'shall serve' : *Ramesher Das v. C.I.T.* 2 I.T.C. 324.

More than one.—

Any number of notices may be given under S. 13 (2) (a) : 2 I. T. C. 1.

Waiver of.—

When the person presenting the return having been summoned under S. 13 (2) (a) has appeared in person and been examined on various points by the Tax officer which the later wanted him to elucidate, but the assessee did not specify further points, nor asked for further notice to produce evidence on such points the question is, has he waived his right to give further evidence : *Nirmal Kumar v. Secretary of State* 1 I. T. C. 1941=925, Cal. 175 (Per Greaves J.)

One view is that he has ; another view is that he has not and that he should be given further opportunity by issue of a fresh notice. 1 I.T.C. 393 (Per Mukerji J.)

Letter or telegram not a notice.—

A notice, letter, telegram granting adjournment is not a notice under S. 13(2) (a) even though sent in reply to a request seeking adjournment upon a notice under S. 13 (2) (a). *Parianna Pillai v. C. I. T.* 1930 *Mad.* 119=4 I.T.C. 217.

Any evidence i.e., in support of the return.—

The word "evidence" as used in sub-section (2) (a) of S. 13 of the Bihar Sales Tax Act, cannot obviously be confined to direct evidence and is comprehensive enough to cover circumstantial evidence. *Paras Das Munna Lal v. C.I.T.* 1937 I.T.R. 523=1938 *Lah.* 209.

Reasonable opportunity.—

In case of a notice under S. 13 (2) (a), calling on the assessee to give evidence in support of return reasonable time out to be given to the assessee to do so. A week's time has been held to be insufficient in such a case : *Sachidanand Sinha v. C.I.T.*=1924 *Pat.* 644.

Such other evidence.—

The words "such other evidence" in S. 13 (2) (b) does not permit of any evidence being called by the Sales Tax Officer, *Lachman Narain Dass* 2 I.T.C. 1.

Non-genuine account books—Best judgment assessment.—

Having rejected all the account books furnished by the assessee as not genuine it was certainly open to the Sales Tax Officer, indeed it was his duty, to make assessment for the period in question under Sales Tax Act to the best of his judgment. Before best judgment assessment, the Sales Tax Officer took everything into consideration, the situation of the shop, the rush of the customers and the stock in the shop and also the estimate made by the Assistant Commissioner for previous quarters, *Doma Sahu Kishan Lal v. State of Bihar.*

It can be the intention of the Act that simply because an assessee has failed to produce the prescribed cash or credit memo in time or has produced memos which do not strictly comply with the terms of Rule 36 (1) of Bihar Sales Tax Act of 1944 the authority shall treat the whole gross turnover as taxable without exercising his judgment. And the exercise of judgment can only mean a consideration of the nature of the assessee's business,

any other reliable evidence that he may produce and such other factors as unfamiliarity with the provision of a new Act, the novelty of the requirement (convenient to the department but not so to the dealer) of the issue of separate memos for tax free and taxable goods though sold to the same customer and paid for at the same time or by the same cheque on the customer's bankers : *Sarjoo Lal Ramchandra Lal v. The Province of Bihar, Case No. 43 of 1946.*

BOMBAY.—

The Bombay Sales Tax Act 1946.—Section II. (1) (a) the amount of tax due from a registered dealer shall in the case of first assessment be assessed in respect of such period not exceeding twelve months as the Commissioner may determine.

- (b) In the case of subsequent assessments the amounts shall be assessed each for periods not less than twelve months, provided that if the dealer has at any date discontinued or transferred his business or ceased to be liable to pay the tax, the amount shall be assessed for the period till that date.
- (c) If the Commissioner satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.
- (2) (a) If the Commissioner is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.
- (b) On the day specified in the notice or as soon afterwards as may be, the Commissioner shall, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require on specified points, assess the amount of tax due from the dealer.
- (3) If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the Commissioner shall assess, to the best of his judgment, the amount of tax due from the dealer.
- (4) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Commissioner shall after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax, if any, due from the dealer.
- (5) If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in cases

where such dealer has wilfully failed to apply for registration the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act.

Issue of Notice under S. 11 (2) (a).—In the case of notice under S. 11 (2) (a), calling on the assessee to give evidence in support of return reasonable time ought to be given to the assessee to do not so. A week's time has been held to be insufficient in such a case : *Suchidanand Sinha v. C.I.T. 1 I.T.C. 381 ; 1924 Pat. 644.*

Issue of notice under S. 11 (2) (a) is mandatory, the words used being 'shall serve' *Ramesha Das v. C.I.T. 2 I.T.C. 324.*

A further opportunity should be given ; else the assessment invalid : *Radheylal Balmukand In re 1931 All. 23.*

Where the assessee files a return which is not accepted, assessment is illegal without of a notice under S. 11 (2) (a) the case indicating a very important point of Law : *Nirmal Kumar Nowlakshya v. C.I.T. 1925 Cal. 175.*

Any evidence, i.e. in support of the return.—The word "evidence" as used in clause (c) of sub-section (1) of section 11 of Bombay Sales Tax Act cannot obviously be confined to direct evidence and is comprehensive enough to cover circumstantial evidence : *Paras Das, Munna Lal v. C.I.T. 1937 I.T.R. 523 (526).*

Best Judgment Assessment.—The provision of S. 11 (3) are of a peculiar nature. Being mandatory, they are discretionary also and are, from their very nature, arbitrary, more or less ; in fact, they have to be so : *Mohd. Hayat (Haji) v. C.I.T. 5 I.T.C. 195 ; 1931 Lah. 87.* Best judgement under section 11 (3) is not, however, to be penal in any case and ought to proceed on some data : *Jotram Sher Singh v. C.I.T. 7 I.T.C. 178 ; 1934 All. 559.*

When S. 11 (3) says that Commissioner shall make the assessment to the best of his judgment, it means that he must make it according to the rules of reason and Justice, not according to private opinion, according to Law and not humour, and that the assessment is not to be arbitrary vague and fanciful but legal and regular : *Chattyar Firm P.K.N., P.R. v. C.I.T. 1930 Rang. 33 ; 4 I.T.G. 87 (80).*

To the best of his judgment only means as best as he can in the circumstances : *Abdul Baree Chaudhari v. C.I.T. 5 I.T.C. 352.*

A check on taxing authorities.—If the tax officer, regardless of information in his possession, deliberately, recklessly or fraudulently has made an assessment under S. 11 (2) & (3) (a) which he knows that he was not justified in making such circumstances, and assuming that the assessee has failed to obtain redress as provided in the Act, the High Court does possess jurisdiction, in virtue of its inherent prerogative, power to order the tax officer to do his duty. Tax authorities (such Government Departments entrusted with questions of public importance) is autocrat, free to act as it pleases but is an inferior taxing authorities subject to the Jurisdiction of the High Court : *Abdul Baree Chaudhari v. C.I.T. 5 I.T.C. 352.*

Notice calling for return.—(1) Personal service of notice u/s 10 (1) of Act is not mandatory. It may be served on an agent or *gumashta* of the person, proved as a fact to be authorised to accept service of such notice is sufficient if it is served at the principal place of business : *Himat Rai Pali Ram v. C.I.T.* 5 *I.T.C.* 133. (2) service of notice on assessee's son, being an adult male member of family residing with him, is sufficient service : *Mohan Lal v. C.I.T.* 6 *I.T.C.* 101 (3). A notice under S. 10 (1) is not invalid simply because it is on a wrong form ; nor because of a mistake in date.

Omission or wrong statement in a return.—Filing of a revised correct return, however, does not condon at offence committed by the filing of an earlier false return : *Ganga Sagar v. Emperor* 1929 *All.* 914 ; 4 *I.T.C.* 97.

BOMBAY.—

Bombay Sales Tax Act 1952 (ordinance) Assessment of taxes.—**Section 14.** (1) The amount of the tax due from a registered or a licenced dealer shall be assessed separately for each year during which he is liable to pay the tax:

Provided that when a dealer has failed to furnish any return relating to any period in a year by the prescribed date, the Collector may, if he thinks fit, assess the tax due from such dealer separately for different parts of such year :

Provided further that the Collector may, subject to such conditions as may be prescribed, and for reasons to be recorded in writing, assess the tax due from any dealer during a part of a year.

(2) If the Collector is satisfied without requiring the presence of a dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of the tax due from the dealer on the basis of such returns.

(3) (a) If the Collector is not satisfied without requiring the presence of a dealer who has furnished his returns or the production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns or such other evidence as may be specified in such notice.

(b) On the date specified in the notice or as soon afterwards as may be, the Collector shall, after considering such evidence as the dealer may produce and such other evidence as the Collector may require on specified points assess the amount of the tax due from the dealer.

(4) If a dealer having furnished returns in respect of a period fails to comply with the terms of the notice issued under sub-section (3), the Collector shall assess, to the best of his judgment, the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the Collector shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of the tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the collector is satisfied that any dealer has been liable to pay tax in respect of any period but has failed to apply for registration or licence, the Collector shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment the amount of the tax, if any, due from the dealer in respect of such period and all subsequent periods and in cases where such dealer has wilfully failed to apply for registration or for the grant of a licence, the Collector may direct the dealer to pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(7) Any assessment made under this section shall be without prejudice to any prosecution for an offence under this Act.

C. P. & BERAR.—

Section 11. (1).—If the Commissioner is satisfied that the returns furnished by a registered dealer in respect of any period are correct and complete, he shall assess the dealer on them.

(2) If the Commissioner is not so satisfied he shall serve the dealer with a notice appointing a place and day and directing him—

- (i) to appear in person or by an agent, or
- (ii) to produce evidence or have it produced in support of the returns.

(3) After hearing the dealer or receiving the evidence produced in support of the returns and such further evidence as the Commissioner may require, the Commissioner shall assess him to tax.

(4) If a registered dealer—

- (a) does not furnish returns in respect of any period by the prescribed date, or
- (b) having furnished such return fails to comply with all the terms of a notice issued under sub-section (2), or
- (c) has not regularly employed any method of accounting, or if the method employed is such that, in the opinion of the Commissioner, assessment cannot properly be made on the basis thereof,

the Commissioner shall in the prescribed manner assess the dealer to the best of his judgment :

Provided that he shall not so assess in respect of the default specified in clause (a) unless the dealer has been first given a reasonable opportunity of being heard.

(5) If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, the Commissioner shall, at any time within three calendar years

from the commencement of this Act and there after within twelve months from the expiry of such period after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods; and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount, so assessed, a sum not exceeding one and a half times that amount.

(6) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

DELHI.—

Section 11. (1) If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall, within eighteen months after the expiry of such period, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of the tax due from the dealer and in making such assessment shall give the dealer a reasonable opportunity of being heard; and in the case of failure by a registered dealer to submit a return in respect of any period, a return accompanied by a receipt from the Government Treasury or the Reserve Bank of India as required under sub-section (3) of section 10, by the prescribed date, the Commissioner may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of the tax so assessed a sum not exceeding one and a half times that amount.

(2) If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period but has failed to get himself registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer a reasonable opportunity of being heard; and the Commissioner may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding one and a half times that amount.

(2a) No assessment under sub-section (1) shall be made after the expiry of four years and no assessment under sub-section (2) shall be made after the expiry of six years from the end of the year in respect of which or part of which the assessment is made.

(3) The amount of tax—

- (a) due where the returns are furnished without receipt showing full payment thereof, or
- (b) assessed under sub-section (1), less the sum, if any, already paid by the dealer in respect of the said period, or
- (c) assessed under sub-section (2),

shall, together with any penalty that may be directed to be paid under any of the provisions of this section, be paid by the dealer into a Government Treasury of the Reserve Bank of India by such date as may specified in a notice issued by the Commissioner for this purpose and the date to be so specified shall be not less than thirty days from the date of service of such notice :

Provided that the Commissioner may, in respect of any particular dealer and for reasons to be recorded in writing, extend the date of such payment or allow such dealer to pay the tax due and the penalty (if any) by instalments.

(4) Any amount of tax or penalty which remains unpaid after the date specified in the said notice shall be recoverable as an arrear of land-revenue.

(5) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence against this Act.

Refunds.—The Commissioner shall, in the prescribed manner, refund to a dealer applying in this behalf any amount of tax or penalty paid by such dealer in excess of the amount due from him under this Act, either by cash payment or, at the option of the dealer by deduction of such excess from the amount of tax due in respect of other period :

Provided that no refund shall be made unless the claim for refund is made within twelve months from the date of the assessment of tax or the date of imposition of penalty or within *six months* from the *date of any final order* passed on appeal, revisions or review under section 20 or reference under 21, whichever period expires later.

(2) Nothing in sub-section (1) shall be deemed to empower the Commissioner to amend, vary or rescind any assessment or to amend, vary or rescind any order passed on appeal, revision or review under section 21, or to confer on a dealer any relief in addition to what he is entitled under the provisions of this Act.

EAST PUNJAB.—

Section 11. (1) If the Assessing Authority is satisfied without requiring the presence of registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(4) If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the Assessing Authority shall within three years after the expiry of such period, assess, to the best of his judgment, the amount of tax due from the dealer.

(5) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall within three years after the expiry of such period after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within three years after the expiry of such period after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all the subsequent periods and cases where such dealer has wilfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(7) The amount of tax—

(a) due where the returns are furnished without receipt showing full payment thereof, or

(b) assessed under sub sections (1), (3), (4) and (5), less the sum, if any, already paid by the dealer in respect of the said period, or

(c) assessed under sub-section (6) together with the penalty directed to be paid under that sub-section,

shall be paid by the dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified in a notice issued by the Assessing Authority for this purpose and the date to be so specified shall be not less than thirty days from the date of service of such notice:

Provided that the Assessing Authority may, in respect of any particular dealer and for reasons to be recorded in writing, extend the date of such payment or allow such dealer to pay the tax due and the penalty, if any, by instalments.

(8) The amount of tax and penalty imposed which remains unpaid, after the date specified in the said notice shall be recoverable as arrears of land revenue.

(9) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under the Act.

MADHYA BHARAT.—

Section 8. (i) (a) Assessment of taxable turnover and determination of tax due for any year, shall be made after the returns for all the periods of that year have become due:

Provided that in the case of Melas the assessment shall be made as soon as the return of turnover has been received.

- (b) If no return is submitted by the dealer under section 7 (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, determine the turnover of the dealer for the previous year to the best of his judgment and assess the tax on the basis thereof:

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

- (c) If the assessing authority, after such enquiry, as he considers necessary, is satisfied that the returns furnished by a dealer are correct and complete he shall assess the tax on the basis thereof.

(2) If the assessing authority is not satisfied without requiring the presence of the person who made the returns or the production of evidence that the returns are correct and complete, he shall serve on such person a notice requiring him on a date and place to be therein specified—

- (i) to appear in person, or by an agent duly authorised in writing ; or
- (ii) to produce or cause to be produced, any evidence on which such person may rely, in support of the returns ; or
- (iii) to produce or cause to be produced such accounts or documents pertaining to the assessment year and to three years preceding as the assessing authority may require.

(3) On the day specified in the notice under sub-section (2) or as soon afterwards as may be, the assessing authority after hearing such evidence as such person may produce and such other evidence as the assessing authority may require on specified points, shall by an order in writing, assess the taxable turnover and determine the tax payable on basis of such assessment.

(4) If a dealer—

- (a) having furnished returns fails to comply with all the terms of a notice issued under sub-section (2); or
- (b) has not regularly employed any method of accounting, or if, the method employed is such that, in the opinion of the assessing authority, assessment cannot properly be made on the basis thereof ,

the assessing authority shall assess the dealer to the best of his judgment and determine the tax payable on the basis of such assessment.

(5) In determining the tax for the year 1950-51 the assessing officer shall allow a rebate, varying from 20% to 40% as may be found necessary, of the tax payable on imported goods by a dealer who had in his stock on 1st May 1950, goods imported before that date.

MADRAS.—

Section. 9 (1)—Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns relating to his turnover in such manner, and within such periods as may be prescribed.

- (2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.
- (b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgment :

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

MYSORE.—

Section. 12. (1) Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns relating to his turnover in such manner, and within such periods as may be prescribed.

- (2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.
- (b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgment :

Provided that before taking action under this clause the dealer shall be given a reasonable opportunity of proving the correctness and completeness of the return submitted by him.

Notes

Onus of proof.—When there is evidence on which Commercial Tax Officer can base a finding that the assessee's books are unreliable and consequently rejects them and the assessee fails to produce other evidence, the Commercial Tax Officer can go ahead to assess to the *best of his judgment*. An assessee who has no such scruples but produces accounts which in the common phrase are "cooked" is in a position of immense advantage over his more honest rival. He can then put the Commercial Tax Officer to the proof of his case. The burden shifts from the assessee to the Commercial Tax Officer, but at the same time the course of natural justice is observed, when the assessee is informed of the substance of the information on which the Commercial Tax Officer purposes to act and of the case against him and is given a reasonable opportunity to meet the case. It is open to Commercial Tax Officer, and that the nature of his work makes it inevitable, to act on private and confidential information in a work which is of a strictly private and confidential nature without disclosing the names of his informants. See in 1940 I.T.R. Page 176 in first para.

ORISSA.—

Section 12 (1) If the Collector is satisfied, without requiring the presence of a registered dealer or the production by him of any evidence, that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) (a) If the Collector is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him on a date and at a place to be specified therein, either to attend in person or to produce or to cause to be produced there any evidence on which such dealer may rely in support of such returns.

(b) On the day specified in the notice or as soon afterwards as may be, the Collector after hearing such evidence as the dealer may produce, and such other evidence as the Collector may require on specified points, shall assess the amount of tax due from the dealer.

(3) If a registered dealer, having furnished returns in respect of a period, fails to comply with all the terms of a notice issued under sub-section (2), the Collector shall assess, to the best of his judgment, the amount of tax due from the dealer.

(4) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Collector shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any due from the dealer.

(5) If upon information which has come into his possession, the Collector is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, the Collector shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and the Collector may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act :

Provided that when the Collector has imposed a penalty in addition to the amount assessed under this section, no further proceedings either revenue or criminal shall be taken against the dealer :

Provided further that no order assessing the amount of tax due from a dealer in respect of any period shall be passed later than thirty-six months from the expiry of such period.

(7) If for any reason the turnover of a dealer for any period to which this Act applies has escaped assessment or has been under-assessed, the Collector may at any time within thirty-six months of the end of that period call

for a return under sub-section (1) of section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in sub-section (5) of this section.

SAURASHTRA.—

Section 11. (1) (a) The amount of tax due from a registered dealer shall in the case of first assessment be in respect of such period not exceeding twelve months as the Commissioner may determine.

(b) In the case of subsequent assessments the amounts shall be assessed each for periods not less than twelve months, provided that if the dealer has at any date discontinued or transferred his business or ceased to be liable to pay the tax, the amount shall be assessed for the period till that date.

(2) If the Commissioner is satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of the tax due from the dealer on the basis of such returns.

(3) (a) If the Commissioner is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(b) On the day specified in the notice or as soon afterwards as may be, the Commissioner shall, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require on specified points assess the amount of tax due on the dealer.

(4) If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (3), the Commissioner shall assess, to the best of his judgment, the amount of tax due from the dealer.

(5) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Commissioner shall after giving the dealer a reasonable opportunity of being heard assess to the best of his judgment, the amount of tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Ordinance in respect of any period and has nevertheless wilfully failed to apply for registration, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment the amount of tax, if any due from the dealer in respect of such period and all subsequent periods and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(7) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under his Ordinance.

United States of Travancore & Cochin.—

Section. 12 (1) Every dealer whose turnover is ten-thousand Indian rupees or more in a year shall submit such return or returns relating to his turnover, in such manner, and within such periods as may be prescribed.

(2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete the assessing authority shall assess the dealer to the best of his judgment :

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Uttar Pradesh.—

Section. 7 (1) Subject to the provisions of section 18, every dealer whose turnover in the previous year is Rs. 12,000 or more in a year shall submit such return or returns of his turnover of the previous year within sixty days of the commencement of the assessment year in such form and verified in such manner as may be prescribed:

Provided that the State Government may prescribe that any dealer or class of dealers may submit, in lieu of the return or returns specified in this section, a return of his turnover of the assessment year at such intervals, in such form and verified in such manner as may be prescribed, and thereupon all the provisions of this Act shall apply as if such return or returns had been duly submitted under this section:

Provided further that the assessing authority may in his discretion extend the date for the submission of the return by any person or class of persons.

(2) If the assessing authority, after such inquiry, as he considers necessary, is satisfied that any returns submitted under sub-section (1) are correct and complete he shall assess the tax on the basis thereof.

(3) If no return is submitted by the dealer under sub-section (1) within the period prescribed in that behalf or, if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, determine the turnover for the dealer for the previous year to the best of his judgment and assess the tax on the basis thereof :

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Best Judgment Assessment.—

It cannot be the intention of the Act that simply because an assessee has failed to produce the prescribed cash or credit memo in time or has produced which do not strictly comply with the terms of Rule under the Act, the authority shall treat the whole gross turnover as taxable without exercising his judgment. And the exercise of judgment can only mean a consideration of the nature of the assessee's business, any other reliable evidence that he may produce and such other factors as unfamiliarity with the provisions of a new Act, the novelty of the requirement (convenient to the department but not so to the dealer) of the issue of separate memos for tax free and taxable goods though sold to the same customer and paid for at the same time or by the same cheque on the customer's Bankers. *Sarjoolal Ramchandra Lal v. The Province of Bihar*—case No. 43 of 1946.

If the assessing authority is not satisfied that the returns furnished are correct and complete, the assessing authority shall, after making such inquiry as he considers necessary proceed in such manner as may be prescribed to assess to the best of his judgment. *P. K. N., P. R. Chettyar Firm v. The Commissioner of Income Tax* lays down that when tax officer shall make the assessment to the best of his judgment, it means that he must make it according to the rules of reason and justice, not according to private opinion; according to law and not humour, and that the assessment is to be not arbitrary, vague and fanciful but legal and regular. Reference may be made to 4 I. T. C., 183. Commissioner will give a reasonable opportunity to a dealer to put forward his contentions to prove the *bonafide* of his return, before to assess to the "*best of his judgment*."

POWERS OF TAX OFFICER

[Under Sales Tax Acts]

Tax officer can determine disputes.—If any question arises whether or not for the purposes of Sales-tax Act—

- (a) any person or firm or any branch or department of any firm is a dealer, or
- (b) any transaction is a sale or contract, or
- (c) any particular goods purchased by a registered dealer are covered by his certificate of registration, or
- (d) any tax is payable in respect of any particular sale or contract, or
- (e) any goods are classes of goods that should be specified in the certificate of registration of any dealer under the provisions of the Sales-tax Act, the tax officer shall determine such questions:

Provided the tax officer may direct that any such determination shall not affect the liability of any dealer under the Sales-tax Act in respect of any contract entered into or sale effected prior to such determination.

Tax officer can summon persons and take evidence.—The tax officer shall for the purposes of Sales-tax Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters —

- (a) enforcing the attendance of any person and examining him on oath or affirmation,
- (b) compelling the production of documents,
- (c) issuing commissions for the examination of witnesses.

Proceedings before the tax officer are deemed judicial proceedings.—Any proceedings under the Sales-tax Act before tax officer or any person to assist him are deemed to be judicial proceedings, within the meaning of section 193 & 228 and for the purpose of section 196 of the Indian Penal Code.

Duty of Tax Officer.—In *Bhogilal Hargovindas Patel v. C. I. T.* 1937 I. T. R. 417, where it has been held that the position of taxing authorities is a delicate and difficult one. They have to levy tax and at the same to decide judicially objections raised by assessee. In such circumstances it is their duty to act with the utmost fairness to the assessee so as to give them no ground for complaint. If an objection of this nature comes to their notice, they are expected to examine it fairly on its merits and not to take refuge behind any technical defect in the manner in which the objection is raised.

SALES TAX ACTS & ALLIED LAWS

In *Balakrishnan Nathani v. C. I. T. A. I. R.* 1924 Nag. 153, it was held that technicalities in a fiscal statute must be strained in favour of the subject if they are to be strained at all, and not against him.

Tax-officer is not a Court.—Tax Officer is not a court in the usual meaning of that word when he is holding an enquiry. Tax Officer must proceed in a Judicial manner although he is not a court, and he has not the procedure of a court, and he is to some extent a party or Judge in his own case. It is idle and absurd for a person who has books of account and deliberately withholds them to complain of not being treated in a Judicial manner : *Harmukhrai Dulichand v. C. I. T.*, 3 I. T. C. 198, 207.

Tax Officer a public servant.—All tax officers appointed shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code Act XLV of 1860.

Public Servant.—The word 'public servant' (according to Penal Code) describes a person falling under any of the following description hereinafter following namely.—

Ninth :—Every officer whose duty it is as such officer, to take, receive, keep, or expend any property on behalf of Government or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty.

Tenth :—Every officer whose duty it is as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

ACCOUNTS AND INSPECTION

[Under Sales Tax Acts]

Keeping and preservation of accounts.—Every dealer shall have to keep a true account of the goods bought and sold by him. The accounts shall have to be preserved for such period as may be prescribed together with all vouchers relating to stocks, deliveries, purchases, output and sales and also of goods produced and manufactured.

Where accounts are not clear, prescribed form is to be complied with.—If the accounts do not sufficiently enable a tax officer to verify the returns, he may require such dealer by notice in writing to keep such accounts including record of sales as he may direct subject to the rules framed in that behalf under the Sales-tax Act.

Power of tax officer to order production of accounts.—The tax officer subject to such conditions as may be prescribed, require any dealer to produce before him any accounts, registers, documents, relevant to the financial transactions of a dealer including accounts, registers or documents relating to profits derived from the business of any firm or to furnish any information relating to the stock of goods of the dealer or purchases, sales or deliveries of goods by him as may be necessary for the purposes of Sales-tax Act.

Tax Officer can carry on inspection of dealer's shop.—All accounts registers and documents relating to stock of goods of any dealer or purchases, sales or deliveries of goods by him and all goods kept in any place of business or warehouse of any dealer shall at all reasonable times be open to the inspection of the tax officer.

Tax Officer can seize accounts and documents.—In case the tax officer has reason to suspect that a dealer is attempting to evade the payment of any tax due under the Sales-tax Act, he can seize such accounts, registers and documents of the dealer as he may consider necessary.

Tax Officer can search the premises.—In case of suspicion of an attempt on the part of a dealer to evade payment of sales-tax due, the tax officer can enter and search any place of business or warehouse of a dealer as well as the vessel or vehicle or any other place in which business is done.

An assessee must be given opportunity to explain any material evidence, books or matters discovered in the course of enquiry, specially in the course of a surprise visit paid by the tax officer to the assessee's place of business, and when assessment is mainly based on these : (*Sh.*) *Abdul Razak v. C. I. T.* 8 I. T. O. 208=1935, Pat. 425. All reasonable times means reasonable time within the meaning of section 55 of G. P. C. .

Inspection on holiday or lunch hour illegal.—A tax officer is not authorised under law to inspect the shop of a dealer on holiday i. e. closed day or at lunch hour and if he does so it is illegal and the dealer is justified in asking the tax officer to move out of the shop and obstruction to such illegal inspection is no offence. *In re Mariyala Venkateswara Rao* 64. M. L. W. 1017.

Demanding of cash and private papers unlawful.—A tax officer is not authorised under law to demand production of cash and private papers of a dealer while carrying on inspection. Money is not goods within the meaning of Sales-tax Act. *Supra*.

Tax officer cannot prepare an incriminatory statement of dealer and get it signed.—It is highly objectionable for a tax officer to prepare an incriminatory statement of a dealer himself whom he wants to chargesheet later on relying on such statement as evidence and get it signed by him. *In re Mariyala Venkateswara Rao*. 1951 M. W. N. 834=64 M. L. W. 1017.

EXEMPTIONS

Schedules of Exempted goods.—Every Sales-tax Act has a Schedule of exempted goods given and State Governments are authorised to add to, amend or otherwise modify the said schedules by issuing a notification to that effect and the said schedule shall be deemed to be amended accordingly.

General exemptions.—No tax is payable on the following goods in certain States. The sale of water, salt, foodgrains, gur, hooka tobacco, electrical energy for industrial purposes, religious books, magazines, newspapers, motor spirit and lubricants, sale of cotton of handspun yarn and of any cloth woven on handlooms wholly with handspun yarn and sold by persons dealing exclusively in such cloth, the sale of any cloth woven on handlooms wholly or partly with mill yarn if the sale is to a wholesale or retail dealer in the State or if the sale is for delivery outside the State and the delivery is actually so made, the sale of tea grown by the seller on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise if the sale is for delivery outside the State and delivery is actually so made. Besides meat, fruits, fish, milk, curd, ghee, edible oils, butter, khoa and live stock including poultry are also exempt.

Any exemption of any article must be strictly construed and confined to the exemption itself and not extended. Thus, if salt is exempted, but not the gunny bags in which it is packed and sold, if the gunny bags are exempted without a special exemption to that effect, then gunny bags in which rice and other articles are packed, and drums and tins in which oil is packed etc., will also claim exemption, (this case relates to a period when gunny bags were not exempt). *Varasuki & Co v. The Province of Madras, Appeal No 811 of 1947.*

Handloom cloth taxable when subjected to needle work.—Handloom cloth, after coming out of the loom when subjected to needle work performed by hand or machine and thereby has its value increased cannot be exempted from Sales-tax. The exemption can only be claimed in case of handloom woven cloth which is sold in the same State in which it happens to be when finished and removed from the loom. *Ishwar Das Kapoor v. Member Board of Revenue (50 C. W. N. 622)*

Tobacco does not mean hooka tobacco only.—The exemption covers hooka tobacco only and not tobacco, all tobacco being tobacco leaf and what is subject to the levy of tax is the transaction of sale by vendor and not the use to which the vendee may put the goods purchased and so tobacco is not exempt merely because it is to be used as hooka tobacco. *Ramanand v. The State.*

Salt and not gunny bags are exempt interpretation of statute.—When salt was exempted but no mention of the exemption of gunny bags was made a question arose whether salt included gunny bags in which it is packed and it was held that on principle it seems that any exemption of any article must be strictly construed and confined to the exemption itself and not extended to

cover gunny bags in which it is packed and sold. *Varasuki and Co. v. The Province of Madras.*

Cooked food does not include tea and coffee.—Cooked food does not include tea and coffee but only means such food as can be masticated and swallowed e. g. biscuits, cakes etc. The sale of refreshments (solid) prepared after applying heat must be treated as wholly exempt before the amendment of 1949 of Bombay Sales-tax Act.

Ready-to-wear garments of khadi exempt.—Where a dealer deals in cotton, silk and woollen khadi and ready-to-wear garments are prepared out of them and handmade blankets are imported, such ready-to-wear garments and handmade blankets are exempt. The exclusion from the range of Cottage & Home Industries of these blankets is not justifiable by reason of the fact that those were not locally produced and dealer must be presumed to be one dealing exclusively in Cottage and Home Industries. (1952 N.L.J. 27.)

Agents—Exemption of.—Under Section 6 of Madras Sales-tax Act, the exemption can be claimed by an agent who takes only his agreed commission but if any sum of money is collected by a buying and selling agent clandestinely without disclosing its nature to their principals on such transactions, the benefit of Section cannot be claimed. The point of distinction is not that the agent has taken something more than so called agreed Commission but the point is whether the amount taken can be brought within the ambit of the term "agreed commission" by the principal acquiescing in it or allowing the agent to take the money: *The Province of Madras v. The firm of Kanigolla Sivalakshminarayana & others.* (Appeal No. 514 of 1947).

In Public Prosecutor v. R. T. Narasimha Reddy, (1948) A. I. R. Mad. 102, it has been held that it is open to agent to establish that he is merely an agent and not a "dealer" within the meaning of the Act, with a turnover in the business of purchasing and selling goods.

Sale of used goods—Exemption of.—Exemption in respect of sale of used goods can only be claimed if such goods are held to have had no relation whatever with any of the businesses in respect of which the dealer is registered or is liable to registration. Where a company sold some motor lorries used for transport of goods manufactured at the mill of the company, it was held that the sale of such used up goods was taxable. *Sawatram Ramprasad Mills Co., Ltd., v. The State* 1952 S. T. C. 314. But where a dealer in motor accessories and spare parts sold two used up truck and he was not carrying on any kind of business in motor vehicles, it was held that the sale price was not be included in the taxable turnover: *Onkarmal Jodhraj v. The State* 1952 S. T. C. 313. Where dealer in other commodities sold two old motor cars it was held that the sale proceeds could not be included in his taxable turnover. *Mohan Lal Ram Krishan Nathani v. The Madhya Pradesh* 1952 S. T. C. 305.

Sacred books exempted from tax : Under rules the following books are exempted from tax :—

(1) Vedas, (2) Upnishadas, (3) the Ramayana, (4) the Mahabharata, (5) the Bhagwat Gita with all its commentaries, (6) the Puranas.

(1) the Quoran (2) the Tafsir (3) Hadis (4) Sharah-i-Hadis (5) Usul-i-Hadis (6) Usul-i-Tafsir (7) Fiqah (8) Usul-i-Fiqah (9) Kalam

Bible, Zend Avasta, Kalpasutra and Tatwartha Sutra, Dharampada, Granth Sahib.

Sales effected with institutions exempted.—The sales made to the following institutions are also excluded in calculating the taxable turnover—

- (a) Sales made by Canteen Service Installations or by Canteen contractors authorised by the Canteen Stores Department or by registered voluntary canteens to members or Indian Union forces at Canteen Stores.
 - (b) Sales of medicines, instruments and other equipments to—
 - (1) Hospitals and dispensaries and veterinary dispensaries working under the supervision of State Governments, military hospitals and railway hospitals and dispensaries.
 - (2) Charitable hospitals and dispensaries under the administration, control and management of local bodies.
 - (3) Charitable hospitals and dispensaries receiving grant-in-aid from the State Governments.
 - (4) All other private non-aided hospitals and dispensaries which provide medicines free to the poor.
-

PENALTEIS AND PROSECUTIONS

Offences.—Offences under the sales-tax Act are—

- (1) Wilful failure to apply for registration.
- (2) Failure to furnish the return without reasonable cause or to furnish it within the time given or in the manner prescribed.
- (3) Failure to attend in person or through agent when required to do so.
- (4) Failure to produce evidence.
- (5) Concealment of particulars of turnover or furnishing of inaccurate particulars of such turnover deliberately.
- (6) Evasion in any way of liability to pay tax.
- (7) False representation that the class of goods purchased are covered by the certificate of registration.
- (8) False representation made by a dealer that he is registered dealer when purchasing goods.
- (9) Failure to keep prescribed accounts or record of sales.
- (10) Refusal to comply with the requirements for purposes of inspection.
- (11) Production of incorrect accounts, registers or documents knowingly.
- (12) Furnishing of incorrect information required under law knowingly.
- (13) Obstruction offered to any officer making inspection, search or seizure.
- (14) Neglecting to furnish information regarding discontinuance or change of business or change made in the nature of goods.
- (15) Concealing of particulars of sales or deliberately furnishing inaccurate particulars of sales.
- (16) Failure to pay tax due within the time allowed.
- (17) Charging sales-tax from any purchaser on exempted goods.
- (18) Charging sales-tax on other goods at a higher rate than that payable under sales-tax Act.
- (19) Aiding or abetting any of the said offences.
- (20) Wilful submission of an untrue return.
- (21) Realisation of sales-tax by an unregistered dealer.
- (22) False statement made in declaration.

Prosecutions.—The prosecution must prove in an offence in the section 13 read with section 15(b) that the accused is a registered dealer. *The public v. Kuncham Venkateshwar* rule 1952 S.T.C. 216. It is all the partners of a firm who are liable to be convicted for non-payment of tax due under section 15(b) of the Madras General sales-tax Act, 1939. Where two partners only of a firm of three were proceeded against under the said section in their individual capacity, it was held that the procedure was illegal but on a fresh complaint proceedings could be started against all the partners and acquittal of the two would not entitle them to raise a plea under section 403 of Cr. P. C. *Behara Lachma Payaraick in re* 1952 S.T.C. 222.

Extraction of more money by abuse of powers of composition.—The Sales-tax Act empowers the sales-tax authorities to compound offences on receipt of money but it was never the intention of the Legislature that the power conferred by it should be used to obtain as much money as possible by holding a threat of prosecution.

Fine on proof of continuing offence.—In the case of fine imposed for continuing offence, fine cannot be levied respectively. An order for payment of so much of fine per day till the default continues is illegal. There must be proof of continuing offence to give the magistrate jurisdiction to make such an order. 27 C. 565.

Penalty once imposed cannot be reimposed.—Penalty imposed for failure to pay tax cannot be reimposed for failure to pay the assessment dues in full as an assessee cannot be convicted over again in law or equity. 63 M. 67. *S.V. Kistha Pillai, In re*.

Where the petitioner was already once convicted and fined for not paying the assessment fixed for 1946-47, the lower court was not justified in law or in equity in convicting him over again for not having paid that very assessment in full. This is not, like a continuing trespass, a fresh offence every day. Though the old section (section 15) of the Madras General Sales Tax Act of 1939 prescribed an added penalty of Rs. 50 a day, for continued breach, over the maximum fine of Rs. 1,000 for a breach, even that section did not say that a new prosecution can be launched every day and that a fresh fine up to Rs. 1,000 and a penalty of Rs. 50 per day for every day of non payment after the due date can be imposed: *S.V. Kistha Pillai, In re* 1950 M.W.N. 152; 63 M.L.W. 67.

In Akulu Paddayya Naidu, In re A.I.R. 1948, Mad. 104, it was held that the firm is a dealer and be proceeded against as a firm does not appear to be a bar to proceedings being initiated against the partners of the firm. The notice served against firm or one partner of the firm, and to all the partners who are jointly and severally liable for the payment. Hence where notice of demand against the firm is served one partner can be proceeded against.

The prosecution must prove that the accused is liable to pay the tax claimed. *The public prosecutor v. D. Khader Khan, M.L.J. (1946) page p. 461.*

PENALTIES AND PROSECUTIONS

121

The offences are triable by criminal courts with previous sanction of the prescribed authority of sales-tax department.

Offences Compoundable.—The offences under the sales-tax Act are compoundable and the competent authority of Sales-tax department may accept from any person charged with an offence, by way of composition of the offence, a sum not exceeding one thousand rupees or where the offence charged does not involve moral delinquency, not exceeding double the amount of tax which would have been payable by the dealer had he complied with the provisions of the Act, whichever is greater.

Offences are bailable.—The offences under the Sales-tax Act are bailable and the accused is entitled to bail as of right.

Accused cannot be charged again when offence compounded.—On payment of such sum as may be determined by the competent authority on composition of the offence, the accused shall be discharged and no further proceedings shall be taken against him in respect of the same offence.

Punishment for offences.—The offences are punishable with simple imprisonment with or without fine or with fine only in some States.

Nature of the proceedings.—The proceedings are quasi criminal and not purely of a criminal nature when criminal courts are moved by revenue, local or public authorities for the enforcement of a penalty for non-payment of tax.

Ordinarily when a person is proceeded against for any criminal offence, it is incumbent on the prosecution to prove affirmatively that an offence has been committed and if *prima facie* proof has been let in by the prosecution, it is open to the accused to plead and prove that he has not committed any offence. *Narsing Maithu Chettiar in re : A. I. R. 1949 Madras 116*

Validity of assessment cannot be questioned.—The remedy allowed to enforce payment of tax by taking penalty proceedings in a criminal court, is of summary nature and it is enough to prove to the satisfaction of the court that the assessee has become liable to payment of tax under the provisions of the sales-tax Act.

It is not within the province of the criminal court to enter into elaborate inquiry about the correctness or levy of tax or validity of assessment as criminal courts have no jurisdiction to question the validity of tax.

In prosecutions which are merely meant to penalise the default and enforce the payment of tax assessed, the validity of the tax assessed, cannot be questioned by Criminal Courts. The Magistrate in Criminal Court cannot assume jurisdiction to question the legality or propriety of the order of assessment passed by the assessing authority. It is not the duty of the Court to enter into an elaborate enquiry about the correctness of the levy or the validity of tax. Whether a dealer's liability to pay tax arises or not and disputes with regard to it can be questioned in Criminal Court. *Thimmina Kotte Kotrappa v. Asstt. Sales-Tax Officer A. I. R. 1951 Mysore 37.*

Prosecution to prove fact of assessment and service of demand notice.—

The prosecution has to prove, to establish a *prima facie* case against the accused that assessee has been assessed to tax on a certain date and demand notice has been served on the accused or the accused admits the fact of service and demand was not complied with. *Thimmina Katte Kotrappa v. Asstt. Sales Tax Officer* 1951 A. I. R. Mysore 37.

Burden shifts to the accused.—This shifts the burden of proof on the accused. The prosecution must prove that the accused is liable to pay tax. *Thimmina Katte Kotrappa v. Asstt. Sales Tax Officer* 1951 A. I. R. Mysore 37 1946 M. L. J. 461.

Reasonable cause a good defence.—No penalty can be imposed if there was reasonable cause for the dealer for failure to make a return.

If an illiterate person has not seen the public notice that clearly amounts to a reasonable cause and no penalty can be imposed on him.

COMPOSITION OF OFFENCES

Compounding of offences (1) Subject to such conditions as may be prescribed, the Commissioner may accept, from any person alleged to have committed an offence under any rules made under Bengal Finance Sales-tax Act, either **before or after** the commencement of any proceedings against such person in respect of such offence by way of composition for such offence, a sum not exceeding five thousand rupees or where the offence alleged to have been committed is under clause (a) or clause (b) of that sub-section, not exceeding double the amount of the tax which would have been payable by such person had he complied with the provisions of the Act, whichever is greater.

(2) On payment in full of such sum as may be determined by the Commissioner under sub-section (1)—

(a) no proceedings shall be commenced against such person as aforesaid ; and

(b) if any proceedings have been already commenced against such person as aforesaid, such proceedings shall not be further proceeded with.

Compoundable and non-compoundable offence :—The taxing authorities cannot interfere with regard to compromise in the offences which fall within the purview of S. 193 and 453 of Indian Penal Code. Therefore the Tax Officer cannot proceed to compound a non-compoundable offence under S. 193 and 453. Prosecution can be withheld in case of offences falling under S. 177 of Indian Penal Code. A compromise can be made between a tax-payer and taxation department on payment of mutual agreed sum by former to latter in consideration for compounding such offence before or after the institution of proceedings. *Attorney General v. Midland Bank* 13 A. T. C. 602.

Wilful untrue return is compoundable offence under S. 167 :—Under section 22(1) (b) if a dealer submits a false return which he believes to be untrue is strictly liable to be prosecuted. Wilful wrong statement in a false return is not governed by S. 193 of Indian Penal Code but by S. 177 of I. P. C. for which there can be withholding of prosecution in pursuance of compromise between assessee and Revenue Officer. *Ganga Sagar v. Emperor*, 4. I. T. C. 97.

False evidence to support return is non-compoundable offence :—In *Hajari-lal v. Emperor* 1937 I. T. R. 616, it is held that assessee produced before a tax officer false evidence to support the return made by him he can be convicted under section 196, of Penal Code, even though the accounts are not produced voluntarily but under the order of tax officer.

A statement made in the return of income or sales is not evidence given in a proceeding before Sales Tax Officer under Sales-tax Act covering judicial proceedings within the meaning of S. 193 and 228 and for the purposes of Sec 196 of Penal Code. Therefore a statement in false return which an

assessee believed to be false or did not believe to be true and thereby committed an offence not punishable under S. 193 but under S. 177 of Penal Code. (1937. I. T. R. 610.)

Production of forged documents on Officer's order is not evidence under S. 196 of Penal Code :—In Asstt. Session Judge, *North Arcot v. Ramanmal and Be Muthiah Chetty* 22. M. L. J. 141; 13 I. C. 275, it is held where a forged document has merely been produced in compliance with an order by the Court it cannot be said to have been used as evidence and, therefore, no offence committed under S. 196 of Penal Code.

It was held in *re Nataraja Iyer* 23. M. L. J. 393 and in *re Punamchand Maneklal*. I. L. R. 38 Bom. 642 that a tax officer is a Revenue Court, and Subhedar, A. J. C. took the view in Criminal Revision No 193, of 1933 that it is open to the Tax officer to act under Sec. 467, Criminal Procedure Code, and make a Complaint of the offence committed before him and this correct view has been accepted by his lordship in *Hazarilal v. Emperor* I. T. R. 1937 Page 610.

The Act empowers the authorities to compound offences on receipt of money ; but it was never the intention of the legislature that the power conferred by it should be used to obtain as much money as possible by holding out a threat of prosecution. Reference may be made to *Ganga Sagar v. Emperor* A. I. R. 1929 All. 919.

ISSUE OF WRITS

Nature of writs.—Under article 226 of the Constitution of India, writs of mandamus or *certiorari* can be issued when the rights of a subject are infringed and so are dependent on the facts of each case and the nature of illegality or wrong alleged. But there is nothing in that article as a writ of course or a writ by right and under the said article all writs are discretionary.

Attack on basic principles of assessment, writ can issue.—Where an aggrieved party challenges the manner of assessment or a question of fact about the quantities and prices and appeal or revision is proper remedy but when the attack is on the basic principles of assessment, an application in revision or an appeal is not very useful and the aggrieved party can seek remedy under article 226 of the Constitution for India A. I. R. 1951 U.P. 8.

Writ can issue when conduct of authorities warrants it.—Writs cannot be issued as a general rule in cases where another and effective remedy is open to the assessee and deviation from this rule can be made in exceptional cases. When the conduct of authorities is such that as to make it clear that they have not been discharging their duties and are not likely to do so without the guidance of the High Court, that Court will be justified in issuing a writ of mandamus. *Piare Lal & others v. The Asstt. Sales Tax Officer.*

If the illegal tax levied is not objected to in the previous years and long and tedious avenue of appeal or revision not explored, it does not in any way affect the power of issuing a writ of mandamus when facts of the case warrant an issue of a writ. But in such a case Government should have notice of the alleged illegality or wrong on which the petition for issue of writ is founded. (Cosmopolitan club Mad). Writ was issued in a case where assessment was made by an officer having no jurisdiction on the ground that remedies open to the assessee were either by civil suit or under article 226 of Constitution of India. *Central Potteries Ltd. Nagpur v. State of Madhya Pradesh* 1952 S. T. C. 14.

Writ refused on the ground that other remedies were available.—An application for *certiorari* for quashing illegal assessments of Sales-tax is not maintainable.

Where other remedies by way of filing a civil suit etc. are available to the assessee. The Madras General Sales-tax Act of 1939 with all its subsequent amendments has not ousted the jurisdiction of ordinary civil courts when a party is alleged to have been aggrieved by the administration of the Act and suits alleging that sales-tax was illegally levied and excessive amounts were collected as sales-tax are maintainable. *Katte Adrinarayana and Bros v. State of Madras.*

High Court's jurisdiction under Government of India Act.—Section 226 of the Government of India Act of 1935 does not provide for an absolute want of jurisdiction in the High Court on its original side but imposes only a restriction on the exercise of its jurisdiction which could only be done under certain conditions and in certain circumstances and so had power to receive a plain to set aside the order of assessment and its collection being contrary to law for the time being in force on coming into force even of the Constitution for India. *Louis Deyfrus & Co. Ltd. v. Province of Madras.*

POWER OF SALES TAX AUTHORITY TO TAKE EVIDENCE ON OATH

[Under Sales Tax Acts]

The Commissioner or any person appointed to assist him under various Sales tax Acts of India, for the purposes of Sales-tax Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely :—

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of documents ; and
- (c) issuing commissions for the examination of witness ; and any proceeding under this Act before the Commissioner or any person appointed to assist him under sub-section (1) of section 3 shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 288 and for the purposes of section 196 of the Indian Penal Code.

The relevant provisions with regard to enforcing attendance of witnesses, production of documents and issue of commissions are contained in Sections 27, 32, 75 and 77, O. 6, 5, 13, 16 and O. 26 of Civil Procedure Code, and are reproduced hereunder.

Summons and Discovery

[S. 27 to 32]

Summons to defendant—[S. 27].—Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer to claim and may be served in manner prescribed.

Service of summons where defendant resides in another State—[S. 28].—
(1) A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of it proceedings with regard thereto.

Service of Foreign summonses—[S. 29].—Summonses and other processes issued by—

- (a) any civil or revenue court established in any part of India to which the provisions of this Code do not extend, or
- (b) any civil or revenue court established or continued by the authority of the Central Government outside India, or

- (c) any other civil or revenue court outside India to which the Central Government has, by notification in the Official Gazette declared the provisions of this Section to apply, may be sent to the courts in the territories to which this Code extends, and served as if they were summonses issued by such courts.

Power to order discovery and the like—[S. 30].—Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence ;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
- (c) order any fact to be proved by affidavit.

Summons to witness—[S. 31].—The provisions in section 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for default—[S. 32].—The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may :—

- (a) issue a warrant for his arrest ;
- (b) attach and sell his property ;
- (c) impose a fine upon him not exceeding five hundred rupees ;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison ;

This section 32 is not applicable to a case where only a production of documents is ordered. *Kumar Rameshwar v. Rami Riknath* 5 Pat. L. J., 556=58 I. C., 281.

Commissions

[Ss. 75 to 78]

Powers of Court to issue commissions—[S. 75].—Subject to such conditions and limitations as may be prescribed, the Court may issue a commission :—

- (a) to examine any person ;
- (b) to make a local investigation ;
- (c) to examine or adjust accounts ; or
- (d) to make a partition.

Commission to another Court—[S. 76].—(1) A commission for the examination of any person may be issued to any Court (not being a high Court) situate in a State other than the State in which the Court of issue is

situate and having jurisdiction in the place in which the person to be examined resided.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued unless the order for issuing the commission has otherwise directed in which case the commission shall be returned in terms of such order.

Letter of request—[S. 77].—In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within the States.

Commissions issued by foreign Courts—[S. 78].—Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

- (a) courts situate in any part of India to which the provisions of this Code do not extend ; or
- (b) courts established or continued by the authority of the Central Government outside India ; or
- (c) courts of any State or country outside India.

Issue of Summons

[O. v.]

Summons—[S. 64].—(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summon has been issued under sub-rule (1) may appear—

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suits, or
- (c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or statement annexed to summons.—[S. 65].—Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

Court may order defendant or plaintiff to appear in person—[S. 66].—(1) Where the Court sees reason to require the personal appearance of the

defendant, the summons shall order him to appear in person in Court on the day therein specified.

Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits—[S. 67].—No party shall be ordered to appear in person unless he resides :—

- (a) within the local limits of the Court's ordinary original Jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is a railway or steamer communication or other established public conveyance for five sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court house.

Summons to be either to settle issues or for final disposal—[S. 68].—The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit ; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant—[S. 69].—The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Summons to order defendant to produce documents relied on by him—[S. 70].—The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witness—[S. 71].—Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance upon whose evidence he intends to rely in support of his case.

Service of Summons

[O. V.—R. 9 to R. 30]

Delivery or transmission of summons for service—[R. 9].—(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons, shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

Mode of service—[R. 10].—Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants—[R. 11].—Save as otherwise prescribed where there are more defendants than one service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable, or on his agent—[R. 12].—Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business—[R. 13].—(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the matter of a ship shall be deemed to be the agent of the owner or charterer.

Service on agent in charge in suits for immovable property—[R. 14].—Where in a suit to obtain relief respecting, or, compensation for wrong to, immovable property service cannot be made on the defendant person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on male member of defendant's family—[R. 15].—Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation—A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment—[R. 16].—Where the serving officer delivers or tenders a copy of the summons to the defendant personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found—[R. 17].—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or

annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Endorsement of time and manner of service.—[R. 18].—The serving officer shall, in all cases in which the summons has been served under rule, 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Examination of serving officer—[R.—19].—Where a summons is returned under rule, 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service—[R. 20].—(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court house, and also upon some conspicuous part of the house, (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Service of summons where defendant resides within jurisdiction of another Court—[R. 21].—A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Service within presidency towns, of summons issued by Courts outside—[R. 22].—Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, and Bombay is to be served within any such limits, it shall be sent to the Court of small Causes within whose jurisdiction it is to be served.

Duty of Court to which summons is sent—[R. 23].—The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

Service on defendant person—[R. 24].—Where the defendant is confined in a person, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service where defendant resides out of state and has no agent—[R 25].—Where the defendant resides out of the State and has no agent in the State empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service in foreign territory through political agent or Court.—[R. 26].—Where—

(a) in the exercise of any foreign jurisdiction vested in the State Government a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) the State Government has, by notification in the official Gazette, declared in respect of any Court situate in any such territory and not established or continued in exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued under this Code by a Court of the State shall be deemed to be valid service, the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served, upon the defendant; and if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Service on civil Public Officer or servant of Railway company or local authority—[R. 27].—Where the defendant is a public officer (not belonging to State's military, naval or air forces) or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed together with a copy to be retained by the defendant.

Service on soldiers, sailors or airmen—[R. 28].—Where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Duty of person to whom summons is delivered or sent for service—[R. 29].—(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27, or rule 28 such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed of non-service.

Substitution of letter for summons—[R. 30].—(1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule, (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

Summoning and attendance of witnesses.

[O. XVI]

1. Summons to attend to give evidence or produce documents—[S. 159].—At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

2. Expenses of witness to be paid into Court on applying for summons—[S. 160].—(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend and for one day's attendance.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses—(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. Tender of expenses to witness—[S. 161].—The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. Procedure where insufficient sum paid in—[S. 162].—(1) Where it appears to the Court or to such officer as it appoints in this behalf that sum paid into Court is not sufficient to cover such expenses or reasonable remuneration the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such persons as aforesaid.

Expenses of witnesses detained more than one day.—[S. 162 (2)]—(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance

he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party ; or the Court may discharge the person summoned without requiring him to give evidence ; or may both order such levy and discharge such person as aforesaid.

5. Time, place and purpose of attendance to be specified in summons—[S. 163].—Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes ; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Summons to produce document—[S. 164].—Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Power to require persons present in Court to give evidence or produce document—[S. 465].—Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Summons how served—[S. 166].—Every summons under this order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in order V as to proof of service shall apply in the case of all summons served under this rule.

9. Time for serving summons—[S. 167].—Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure where witness fails to comply with summons—[S. 168].
—(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for

the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of small causes shall make an order for the attachment of immoveable property.

11. If witness appears, attachment may be withdrawn [S. 169].—Where, at any time after the attachment of his property, such person appears and satisfies the Court—

- (a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and
- (b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend, the Court shall direct that the property be released from attachment and shall make such order as to the costs of the attachment as it thinks fit.

12. Procedure if witness fails to appear [S.170].—The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

Provided that if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be realised from attachment.

13. Mode of attachment. (New).—The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this order as if the person whose property is so attached were a judgment debtor.

14. Court may of its own accord summon as witness strangers to suit [S. 171].—Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. Duty of persons summoned to give evidence or produce document.—[S. 172].—Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16. When they may depart.—[S. 173].—(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. Application of rules 10 to 13.—[S. 174-175].—The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Procedure where witness apprehended cannot give evidence or produce document.—[S. 174].—Where any person arrested under a warrant is brought before the Court in custody and cannot; owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No witness to be ordered to attend in person unless resident within certain limits.—[S. 176].—No one shall be ordered to attend in person to give evidence unless he resides :—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty br (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate), less than two hundred miles distance from the Court house.

20. Consequence of refusal of party to give evidence when called on by Court.—[S. 177].—Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Rules as to witness to apply to parties summoned.—[S. 178].—Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Commissions to examine witnesses

[O. XXVI]

1. Cases in which Court may issue commission to examine witness—[S. 383].—Any Court may in any suit issue a commission for the examination of interrogatories or otherwise of any person resident within the local

limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. Order for commission—[S. 384].—An order for the issue of a Commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. Where witness resides within Court's jurisdiction—[S. 385].—A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

4. Persons for whose examination commission may issue—[S. 386]
—(1) Any Court may in any suit issue a commission for the examination of :—

- (a) any person resident beyond the local limits of its jurisdiction;
- (b) any person who is about leave such limits before the date on which he is required to be examined in Court; and
- (c) any person in the service of the State who cannot, in the opinion of the Court, attend, without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the Commission shall be returned to itself or to any subordinate Court.

5. Commission or request to examine witness not within the State—[S. 387].—Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within the State is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to commission—[S. 388].—Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with deposition of witness—[S. 389].—Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

8. When deposition may be read in evidence.—[S. 390].—Evidence taken under a commission shall not be read as evidence in the suit without

the consent of the party against whom the same is offered, unless:—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the Crown who cannot, in the opinion of the Court, attend without detriment to the public service, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause of taking such evidence by commission has ceased at the time of reading the same.

Commission for Local Investigation

9. Commission to make local investigation.—[S. 392].—In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits of damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that where the State Government has made rules as to the persons to whom such commission shall be issued the Court shall be bound by such rules.

10. Procedure of Commissioner—[S. 393 (1)].—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

Report and deposition to be evidence in suit—[S. 393 (2)]—(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commission to examine accounts

11. Commission to examine or adjust accounts—[S. 394].—In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

12. Court to give Commissioner necessary instructions—[S. 395].—(1) The Court shall furnish the Commissioner with such part of the proceedings

and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Proceedings and report to be evidence ; Court may direct further inquiry.—(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Commission to make partitions.

13. Commission to make partition of the immovable property—[S. 396].—Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by Section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner—[S. 392, 2nd and 3rd Paras].—(S) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose equalising the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court ; and the Court after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied ; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit

General Provisions.

15. Expenses of commission to be paid into Court—[S. 397].—Before issuing any commission under this order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the Commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the Commission is issued.

16. Powers of Commissioners—[S. 398].—Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment:—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

- (b) call for and examine documents and other things relevant to the subject of inquiry ;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

17. Attendance and examination of witness before Commissioner—
 [S. 399].—(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether Commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of the State, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court not being a High Court within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. Parties to appear before Commissioner—[S. 400].—(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of parties do not so appear, the Commissioner may proceed in their absence.

Commission issued at the instance of foreign Tribunals.

19. Cases in which High Court may issue commission to examine witness.
 (1) If a High Court is satisfied:—

- (a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceedings before it.
- (b) that the proceedings is of a civil nature, and
- (c) that the witness is residing within the limits of the High Court's appellate jurisdiction.

It may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1).—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in the State and transmitted to the High Court through the State Government, or
- (b) by a letter of request issued by the foreign court and transmitted to the High Court through the State Government, or
- (c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceedings.

20. Application for issue of commission.—The High Court may issue a commission under rule 19 :—

- (a) upon application by a party to the proceeding before the foreign court, or
- (b) upon an application by a law officer of the State Government acting under instructions from the State Government.

21. To whom commission may be issued.—A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the Court thinks fit to execute the Commission.

22. Issue, execution and return of commission and transmission of evidence to foreign Court.—The provisions of rules 6, 15, 16, 17 and 18 of this order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commissions, has been duly executed it shall be returned together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the letter of request for transmission to the foreign court.

RETURNS PRIVILEGED DOCUMENTS

Returns are privileged and confidential.—All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Sales-tax Act, or in any record of evidence given in the course of any proceedings under the Sales-tax Act, other than proceedings before a criminal court are to be treated as confidential and notwithstanding anything contained in the Indian Evidence Act 1872, no court is entitled to require any officer to produce before it any such statement, return, account, document or record or any part thereof or to give evidence before it in respect thereof.

Court is prohibited under section 23 of U. P. Sales Tax Act from ordering a party to obtain certified copies of Sales Tax returns and file it in court, at the cost of the other party : *Velayudhan Pillai v. Subramaniam Pillai* 1941 I. T. R. 275 ; A. I. R. 1941 Mad. 769.

Section 23. (2) contain an exception in the case of disclosure of particulars, for the purpose of prosecution under the Indian Penal Code, in respect, of any statements, return, accounts, or documents which show that for purposes of certain prosecutions confidential documents may be produced even by tax authorities. *Emperor v. Osman Chatni* (1942) 2 I. T. G. 145.

Object in granting the privilege.—The provisions are intended to prevent tax authorities from betraying confidence of which they are recipients. Others are not prevented from giving information of which they are possessed.

In Pramatha Nath Pramanick v. Nairode Chandra Ghose I. T. R. 1939, 570, it is held that the purpose of the section is clearly to secure that assessee shall not be deterred from making a frank statement of their income and financial position generally by the fear that the information which they supply to the Department will thereafter be disclosed to other persons, who may use it to the detriment of the assessee, His Lordship observed :

Act XLV of 1860 :—Clause (a) of sub-section 3 of section 25 contains an exception in the case of disclosure of particulars, for the purpose of prosecution under the Indian Penal Code, in respect of any statements, return, accounts or documents, which show that for the purpose of certain prosecutions confidential documents may be even produced by tax authorities. Reference may be made to (193) I. L. R. 56 Bom. 324 & (1940) I. L. R. See also 2. I. T. G. at page 145.

Court cannot order production of certified copies of returns.—Court cannot order a party to obtain certified copies of sales-tax returns and file it in court at the cost of the other party.

Disclosure means disclosure to a stranger and not to party.—It is notable that the prohibition against disclosure is a privilege of the assessee and confidential is no more than a secret between the department and the assessee. Disclosure implies a disclosure to a stranger and not to the party making the statement i. e., assessee.

Assessee can waive the privilege.—Prohibition against the disclosure is a privilege of the assessee and it is the assessee himself who can waive the said privilege whenever he likes. But if he is not prepared to waive, no third party can use the material against him, be the said third party a joint assessee or a stranger.

Implied prohibition against production by public servants.—Under the provisions of the Sales-tax Act, public officer is prohibited from producing any such documents in criminal courts and it is obvious that as production of such documents is made punishable as an offence, there is implied prohibition against its production by a public servant.

In case such a document can be given in evidence without requiring a public servant to produce it, there seems nothing in the provisions of the Sales-tax Act to preclude that from being done (2 I. T. G. 146.)

Where three persons were charged with the offence of cheating and were being tried by the Chief Presidency Magistrate, Bombay. In the course of the trial, the police authorities, acting under the Bombay City Police Act, carried out a search of the office of the I. Tax Commissioner and seized certain documents lodged with the Income Tax Departments by one of the accused. One of these documents was tendered in evidence by a police officer but the trying Magistrate held the same to be inadmissible in view of the Bar created by S. 54 of Income Tax Act (which is equivalent to S. 28 of Orissa Sales Tax Act). On reference to the High Court, *held* S. 54 does not in so many words, say that the public officer (or servant of Crown is prohibited from producing any such documents as is specified but it is obvious that as the production is made punishable as an offence, there is an implied prohibition against the production by a public servant. Reference may be made to *Emperor v. Osman Chotani* 4 I. T. G. Page No. 145.

MISCELLANEOUS PROVISIONS

(Under Sales Tax Acts)

Delegation of Power.

The State Government may, by notification, direct that all or any of the powers and duties conferred or imposed upon the Commissioner by and under Sales-tax Act, shall in respect of such areas and subject to such conditions (if any) as may be specified in the notification be exercised and performed by any officer appointed under section 3 to assist the Commissioner.

Power of Commissioner to determine disputes.

If any question arises (otherwise than in a proceeding before a Court) whether or not for the purposes of Sales-tax Act—

- (a) any person or firm or any branch or department of any firm is a dealer, or
- (b) any transaction is a sale or contract, or
- (c) any particular goods, purchased by a registered dealer are covered by his certificate of registration, or
- (d) any tax is payable in respect of any particular sale or contract, or
- (e) any goods or classes of goods should be specified in the certificate of registration of any dealer under sub-section (3) of section 9,

the Commissioner shall determine such question :

Provided that the Commissioner may direct that any such determination shall not affect the liability of any dealer under Sales-tax Act in respect of any contract entered into or sale effected prior to such determination.

Unregistered dealers not to collect tax.

No dealer who is not a registered dealer shall realize any amount by way of tax on sale of goods from purchasers, nor shall any registered dealer make any collection of such tax except in accordance with such restrictions and conditions as may be prescribed.

Refund.

The Commissioner shall in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax or penalty paid by such dealer in excess of the amount due from him under Sales-tax Act, either by cash payment or, at the option of the dealer, by deduction of such excess from the amount of tax due in respect of any other period.

Recovery of tax.—Certificate debtor is barred under Section 22, Bihar Sales-tax Act to challenge the legality or correctness of the assessment before the certificate officer who has power under section 10 of the Bihar and Orissa Public Demands Recovery Act, 1914 to determine whether a certificate debtor is liable for the whole or any part of the amount for which the certificate was signed as the Legislature has conferred jurisdiction on the Sales-tax

Officer to decide the preliminary points rightly or wrongly which will enable him to make a proper assessment and such decisions are final and cannot be challenged except under the machinery provided by the Act. *Ram Krishna Pradhan v. The State* 1952 S.T.C. 248.

Indemnity.

No suit, prosecution or other legal proceeding shall lie against any servant of the Crown for anything which is in good faith done or intended to be done under Sales Tax Act or the rules made thereunder.

Jurisdiction of Civil Court.—S. 20 of Bombay Sales-tax Act bars the Jurisdiction of Civil Courts in Sales-tax matters. The facts that all the remedies under Sales-tax Law have been exhausted and that there is no other remedy left is no reason for invoking the said of Civil Court : *Secretary of State v. Meyyappa Chettiar* (VM) 1937 Mad. 241.

Where a suit was followed by an executor on the ground that he was not liable, it was held that no such suit lies as the collector acted within his jurisdiction in making him liable to pay tax : (AH) *Forbes v. Secretary of State* 1 I.T.C. 9 : 42 C. 151.

A Civil suit as to the validity of the Plaintiff's claim for refund is not barred and does lie : *Inder Chand v. Secretary of State* 1941 I.T.R. 673.

Sales not leviable in certain cases..

(1) No tax shall be payable on—

- (a) the sale of water, salt, foodgrains, milk, gur. [* *] books, magazines, newspapers and motor spirit as defined in the United Provinces Sales of Motor Spirit Taxation Act, 1939, and any other goods which the State Government may, by a notification in the official *Gazette*, exempt from time to time and
- (b) the sale of any goods by the All-India Spinners' Association or Gandhi Ashram, Meerut, and their branches or such other persons or class of persons as the State Government may from time to time exempt on such conditions and on payment of such fees, if any, not exceeding one thousand rupees annually as may be specified by notification in the official *Gazette*. (U.P. Sales tax)

Sales outside the States.—Clause (1) of Article 286 of Constitution prohibits a state from enacting a law which imposes, or authorises the imposition of, "a tax on the sale or purchase of goods where such sale or purchase takes place—(a) outside the state ; or (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

However in view of Article 304, the state has power to levy tax on goods imported from other states on certain conditions.

APPEALS, REVISION & REFERENCE

APPEALS

(Under Sales Tax Acts)

Assessee can appeal against assessment and penalty imposed.—Any dealer objecting to an assessment or penalty passed under the Sales-tax Act may within the prescribed period from the date of the service of such order, appeal to the competent authority against such assessment or penalty.

Payment of amount of tax is condition precedent.—Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax as the appellate may admit to be due from him has been paid.

Meaning of appeal.—The expression of the term 'appeal' means the removal of a cause or a suit from an inferior to a superior judge or court for re-examination or review. This definition is given in Webster's Dictionary. The appeal set at rest all the grievances of an assessee with regard to judgment passed by the tax officer. Appellate courts open gates for assessee to demand more justice from the hands of the tax authorities. All disputes arising out of an order of tax officer which are opposed to the view point of tax payer can be brought into appeal for final decision. The point which is once decided in appeals serves as a guidance to both the taxing department and the tax payer in future assessment proceedings.

Admission of appeal beyond prescribed period.—The appellate authorities have the discretion to admit an appeal even beyond the time prescribed (as above) for sufficient cause. The provision is similar to the Indian Limitation Act and gives the discretion to Appellate authority to admit appeal even beyond time. There is nothing to prevent time being extended for cause shown : *Damodar Pd. v. C.I.T.* 3 *I.T.C.* 405; 1929 *Pat.* 409.

Where the appellate authority declines to condone delay, it is a question of fact and not of Law for the High Court to interfere in reference. *Kasi Chettiyar v. C.I.T.* 2 *I.T.C.* 38.

'Appeal' is part of continuing assessment proceedings :—In *Raja Bahadur Kamakshya Narain Singh of Ramgarh v. C.I.T. Bihar* 1947 at page 316, para 2, it is held that the assessment proceedings had not come to an end nor were they dead. The appellant had kept the proceedings alive by filing appeals and proceedings were thus pending for decision. The principle came to be considered by the court in *Lachmeshwar Prasad Shukul and others v. Keshwar Lal Chaudhuri and others* (1940) *F.C.R.* 84. It was the agreed view of all the judges that in deciding the appeal they had to take into account legislative changes made since the decision under appeal was given. It was pointed out that this rule of law has been accepted not only in England (*Attorney General v. Birmingham Tame and Rea District Drainage Board*, 1920 *A.C.* 788) but also in the United States of America. Once the new legislation is held to have retrospective operation it is clear that the court of appeal had to decide the appeal according to the law then prevailing, because the adjudication on the rights of the parties as made by lower court was not final. All regulations applicable to assessment proceedings are also applicable to appellate proceedings.

Powers of appellate authority.—In disposing of an appeal the appellate authority may—

- (a) confirm, reduce, enhance or annul the assessment, or
- (b) set aside the assessment and direct a fresh assessment after such inquiry as may be ordered, or
- (c) confirm, reduce or annul the order of penalty,
- (d) condone the delay in filing appeal for sufficient cause and decide the appeal on merits.

Appeal proper relief in illegal assessments.—In case of illegal assessments, the assessee can get relief by an appeal and not by revision for the reason that when an appeal is preferred the appellate authority is bound to go into the questions raised by the appellant and give him the proper relief to which he is found entitled, while in a case of revision, it is discretionary to interfere in the matter.

Appeal lies when notice issued illegal and improper.—Appeal is competent in case where the notice issued to a dealer is illegal and improper. If the dealer objects to the issue of such notice on the ground that he is not liable to pay any tax or the articles in which he deals are exempt from tax, he can file an appeal if he is assessed on a notice which is not legal and proper, and the appellate authority is bound to go into these matters and in case it comes to the conclusion that the position taken by the dealer is correct, it is bound to set aside the order assessing the tax and cancel the notice. To hold that a dealer cannot prefer an appeal unless notice issued to him is legal and proper is to defeat the very object of the provisions relating to appeals. *Piyarelal & Another v. The State of East Punjab*.

No appeal in assessments without jurisdiction.—If an assessment is made by an Additional Sales-tax Officer who has no authority to make an assessment no appeal lies to challenge his order.

Appeal proper remedy when manner of assessment challenged.—Where the manner of assessment is challenged or a question of fact about the quantity or price of goods is objected to, an appeal or revision is proper remedy.

Appeal must be decided even on default of the appellant. An appeal cannot be dismissed for default of the appellant and assessment confirmed without giving reasons in support of the order confirming assessment. The points raised in appeal must be decided before the assessment is confirmed. (18 I.T.R. 928).

Mardamus.—Writ of mandamus refused on the ground that there were other remedies available to the assessee by way of appeal, revision and reference *Phool Chand Sanat Kumar v. Sales-tax Officer, Fatehgarh* 1952 S.T.C. 229.

Condoning the delay for filing appeal.

The evidence to show that the assessee was ill at the critical or relevant time is sufficient ground for excusing or condoning the delay where the delay in filing the appeal is not so much : *Rambhagat Sao Janki Sao v. The Province of Bihar, Case No.—353 of 1945*.

Rejection of appeal—Reasons in support of.

The Assessee filed an appeal before Commissioner against assessment order of assessing officer. The Commissioner fixed the date of hearing. Lawyer failed to present himself on the date of hearing. Consequently the petition was dismissed by the Commissioner for default without deciding the question raised by the appellant in his memorandum of appeal to the Commissioner.

In the High Court, with regard to above case, it was held that it is clear that the Commissioner acted illegally in dismissing the appeal for default and confirming the assessment without giving reasons in support of his order. *Miscellaneous Judicial Case No. 64 of 1949.*

Revisional Jurisdiction—discretionary.

The effect of sub-section (5) of Section 24 is to confer upon a dealer who has been assessed a right to be heard by the Commissioner before his application to receive an order is rejected.

Held that an order refusing to revise is not an order which can be said adversely to affect either party to the proceedings. It is to be noted that the revisional jurisdiction both of the Commissioner and the Board of Revenue is entirely discretionary and when a discretionary jurisdiction is conferred on a Tribunal it is impossible to hold that anybody has a vested right to be heard before an order refusing to exercise the discretionary jurisdiction of revision is passed. Therefore, Commissioner may legally dismiss an application for revision under S. 24 (4) without giving the applicant a revisional opportunity of being heard in support of his application. *Bhagwan Das v. The Province of Bihar, Miscellaneous Judicial Case No. 260 of 1947.*

As in the present Income Tax Law a right of appeal has been specifically provided for, the State Government or the Union of India may provide in the taxing Statute itself dealing with the levy of Sales-tax for a right of appeal to the Supreme Court, but so long as it is not done, a right of appeal cannot be claimed as a matter of course. *Tobacco Manufacturers (India Ltd.) v. The State A I.R. 1951 Pat. 29.*

Appeal to Supreme Court can lie only when provision exists in Statute.—Sales-tax cases and income-tax cases are not civil proceedings within the meaning of Constitution of India and an appeal to Supreme Court is not competent unless provision for such appeal is made in taxing statute itself dealing with the levy of Sales-tax for a right of appeal to Supreme Court 1951 Pat 29.

Appeal to Supreme Court.—Leave to appeal to the Supreme Court under article 133 of the Constitution cannot be granted from an order rejecting the appeal filed before the Commissioner on the ground that the tax was not deposited which order was upheld by the High Court who was moved to grant leave to appeal as such an order of the High Court upholding the decision of the Commissioner was not a judgment or final order.

The test to see whether an order is final or judgment finally disposes of the rights of the parties. The mere fact that the order decides an important and even a vital issue is by itself not material unless the decision facts an end to the suit. The finally must thus be a finally in relation to the suit.

Besides a judgment or final order must affect the merits of the case between the parties by determining some right or liability it is then and then above that an appeal can lie to the supreme Court. *Hossen Kasam Dada Ltd., v. The State* 952 I.T.R. 289.

Revision

Competent authority can examine and call for record—The prescribed authority may, either on his own motion or on an application filed by the parties within specified time, call for or examine the records of any proceedings which have been taken under the provisions of Sales-tax Act and revise such order after such inquiry as may be deemed necessary.

Opportunity of being heard is to be given in case of prejudicial orders.—Provided that no order prejudicial to a dealer shall be passed without giving him a reasonable opportunity of being heard.

Revisional jurisdiction entirely discretionary.—The revisional jurisdiction is entirely discretionary and when a discretionary jurisdiction is conferred on a Tribunal, it is impossible to hold that any body has a vested right to be heard before an order refusing to exercise the discretionary jurisdiction is passed. *Bhagwandas v. The Province of Bihar*.

Dismissal of revision affects the party adversely.—An order refusing to revise is not an order which can be said to affect adversely either party to the proceedings and it is only when revision petition is going to be dismissed or an order is going to be made that it can be said that it affected the party adversely and so is entitled to be given an opportunity of being heard and showing the cause against the order being made. But if the petition is granted in the absence of the petitioner, it is an order in his favour and he need not be given an opportunity to be present—50 C. W. N. 622.

Revision cannot take the place of appeal.—Revisions can not take the place of appeals for the simple reason that when an appeal is preferred, the appellate authority is bound to go into the questions raised by the appellant and give him the proper relief to which he is found entitled, while in case of revision, it is discretionary to interfere or not. *Piarelal & others v. Assistant Sales-tax Officer*. A revision petition can lie without first filing an appeal *Shri Gopal Krishna Cloth Stores v. The State of Bombay*.

Extent of revisional powers.—In its revisional jurisdiction it is not within the powers of the authority to go beyond the order sought to be revised or the record or act upon further information or evidence placed before him so as to disturb the order originally passed and hold that it was not proper.

Revisional jurisdiction is limited to examining of the record of any order and deciding as to its propriety and does not ordinarily empower the authority to call for fresh evidence and revise the order on the basis of such evidence or new material that is placed before such authority and so in revisional jurisdiction it is not within the powers of such authority to include escaped turnover in the assessment made by a subordinate officer and can do so within prescribed period of limitation. *Louis Deyfrus & Co. Ltd. v. The Province of Madras*.

Minute scrutiny of reasons out of place in revision.—In revision any minute scrutiny of the reasons that must be given for the assessment is out of place and revision is not competent on the question whether particular figure of percentage of enhancement is appropriate and that another figure is not. *Haji Dawood Usman v. The State of Madhya Pradesh.*

Revision cannot lie when penalty paid in course of negotiations.—No revision can lie in a case where the penalty is paid not under an order of the tax officer but in the course of negotiations when the penalty is paid on a letter written by higher Sales-tax Officer advising the assessee to have composition of offences reported to him by the tax officer. *Fiddaali Shaikali Dhamajwali v. The State of Bombay.*

Enhancement of assessment can be ordered in revision.—In the Exercise of revisional jurisdiction enhancement of assessment can be ordered but such order being prejudicial to the assessee, he must be given an opportunity of being heard before such order is passed. *Rawatmal Mulchand v. The State of Assam.*

Revision can be filed in the first instance.—There is nothing in the Sales-tax Act to prevent an assessee to file a revision petition in the first instance without availing of the right to appeal.

Prepayment of tax essential to entertain revision.—The revision can be entertained if tax due and penalty imposed is paid. *Shah Khimji Shamji In re* 1951 2. S. T. C. 158 (Bom. Sales-tax Tribunal)

Delegation of revisional powers illegal.—It is doubtful whether revisional authority can transfer the revision petition to any subordinate for disposal and per Vakil member it was held that revisional powers cannot be delegated. *Shahji Khimji.*

Revision of wrong figure not competent.—Order of assessment cannot be revised if wrong figure arrived at by the assessing authority. 55 C.W.N. 244.

Reference

Statement of case to High Court.—Within prescribed periods under Sales tax Acts of a particular State from the passing of the final tax authority of any order revised by him affecting the liability of any dealer to pay tax under the Sales tax Act, such dealer or the Commissioner may, by application in writing accompanied (where the application is made by a dealer) by a fee of one hundred rupees, require the final tax authority to refer to the High Court any question of law arising out of such order and where the final authority decides to make a reference to the High Court, it shall draw up the statement of the case and refer it accordingly.

Remedies open to the assessee on refusal to make reference.—If for reasons to be recorded in writing the final authority refuses to make a reference, the applicant may within the prescribed period of such refusal,

- (a) withdraw his application (and if he does so, the fee paid shall be refunded), or
- (b) apply to the High Court to require the final authority to make a reference.

If upon the receipt of an application to require the final authority to make a reference, the High Court is not satisfied that the refusal was justified, it may require the final authority to state the case and refer it, and on receipt of such requisition the final authority shall act accordingly.

If the High Court is not satisfied that the case stated is sufficient to enable it to determine the question raised, it may call upon the revising authority to make such additions and alterations therein as the Court may direct in that behalf.

Limitation.—Time for obtaining a copy of order refusing to state a case to the High Court by the revising authority is to be excluded in computing the period of limitation prescribed for an application to the High Court under Section 112 (b) of the U. P. Sales-tax Act, 1948 *Amritsar Sugar Mills Co., v. C. S. T.* 1952 *I. T. R.* 271. In case of illegal recovery of tax limitation prescribed in the act is not applicable for claims of refund and is governed by the general law. The period between payment and the declaration of illegality should not in all equity be included for the very simple reason that during this period. The assessee can make no claim for refund and the limitation is to be counted when the court declared that tax levied was illegal. *State of Vindhya Pradesh v. Raghunath Mannu Lal* 1952 *I.T.R.* 256.

Reference to High Court—Jurisdiction Limited only to question of Law.—The High Court is only allowed, and can only decide what are properly so called, question of Law, and that it is not open to the court to consider and reverse or modify the finding of Revising authority as to what are pure question of facts before it considers and decides question of Law : *A. R. A. M. Somasudaram Chettiar v. C. I. T. Burms* 2. *I. T. C.* 61.

The sufficiency of evidence is no doubt a question of fact but the question whether there is evidence at all from which a inference could be drawn is a question of Law. Case Law discussed *Messrs. Kanhya Lal Umrao Singh*, 1941 *Oudh* 279.

Application presented to High Court calling for reference without an approach to Revising Authority under S. 11 (1) High Court is not competent to ask Revising Authority to state case and refer to it : *M. & D. Aminoof v. C. I. T. Punjab*, 1938 *I. T. R.* 474.

High Court accepts only the cases in which a law point arises. The case on the basis of facts cannot be referred to High Court. It is for the High Court to decide whether the question set up is one of fact or of law. *G. I. T. v. Bodrias Ramraishop* 1937. *I. T. R.* 170 lays down that it may be that a statement of case by the appellate may raise a question as being of law, but the High Court may come to conclusion that the same is essentially one of fact. Similarly *C. I. T. v. Central Popular Assurance Co*, 1939 *Sindh* 293 ; *Chemical Industries* 7. *I. T. C.* 414 ; 1933. *I. T. R.* 21, lays stress that a question set up as one of facts may be found by the High Court to be one of law.

The High Court is only called upon to answer the question of law : *Chamber of Commerce, Hapur v. C. I. T.* 1936 *All.* 764.

Where no question of law is involved, it is not possible to turn a mere question of fact into a question of law by asking whether as a matter of law the officer came to a correct conclusion upon a matter of fact *C. I. T. U. P. C. P. v. Badridas Ramraishop Akoly*, 5 *I. T. R.* 170.

Fails, without sufficient cause.—Under section 24 (b) of Bombay Sales Tax Act, 1946, it is for the Tax Officer to be satisfied that the cause shown is a sufficient cause. There must be found as a fact that a particular cause operated upon the mind of the assessee which prevented him to submit a return. That is a pure question of fact. The sufficiency of it may be question of Law : *C. I. T. Bombay City v. Dhanamal Chellaram* (1943) 16 I. T. R. 391.

Under S. 25 (1), a reference to the High Court is confined only to a question of law which arises out of the order of appellate authority and question of equity cannot be sought for reference to the High Court : *Tobacco Manufacturers (India Ltd.) v. The State of Bihar. Miscellaneous Judicial Case No. 140. of 1949.*

Question of Law arising out of such order.—The words 'arising out of such order' in S. 25 (1) of the Bihar Sales Tax Act of 1947 refer to the point of law arising out of the order of appellate authorities. A point of law not raised before appellate authorities cannot be said to arise out of its order and no reference can be sought on such point : *C. I. T. v. Sindh Light Railway*, 1932, Sindh 189, 6 I. T. C. 27.

Withdrawal of application.—A withdrawal of application by a pleader duly authorised under a Vakalatnama to appear and generally to act on assessee's behalf binds the assessee : *Hashan Banu Bibi's Case* 1940 I. T. R. 452.

Power of High Court on reference.—In case of refusal by the Appellate authorities to state a case because of the question of law involved therein being a settled question of law ; no question of law arises there. The High Court is, on the dissatisfaction of the decision of the appellate authority, competent to require the Board of Revenue to state and refer the Case : *Singer Singh v. C. I. T.* (1942) I. T. R. 411.

Jurisdiction of High Court—Nature of.—Nature of jurisdiction of High Court is merely advisory only on questions stated and referred to the High Court : *Tobacco Manufacturers (India) Ltd. v. the State of Bihar Miscellaneous Judicial Case No. 140 of 1949.*

Limitation.—An application by an assessee before the appellate authorities was filed out of time and appellate authority dismissed it as barred by limitation. The assessee applied to the High Court to excuse the delay in filing the application. It was held that the High Court had no power to excuse the delay : *Bansilal Gulabchand v. C. I. T. Bombay* (1948) 16 I. T. C. 251.

Exclusion of time for obtaining a copy from Appellate authority :—

As given in Yearly Digest at page 66,—in computing the period of limitation for an application under S. 21 of the Bengal Finance (Sales Tax) Act, to require the Board to state a case the time requisition for obtaining a copy of the order of the Board of Revenue should be excluded as provided in S. 29 of the Limitation Act. A. I. R. 1929 Lah. 170, applied (*Chatterjee J.*) *India Ice and Cold Storage Co. Limited v. Member, Board of Revenue, West Bengal*—53 C. W. N. 191.

Time requisite.—The above decision has made it necessary to give away the explanation of the words "time requisite" means time properly and reasonably required. No period can be regarded as requisite which need not have elapsed if the appellant had taken reasonable and proper steps to obtain the order : *Pramath Nath Roy v. W.A. Ice* (1922) Cal. (P. C.)

Cost cannot be awarded against a dealer except by the High Court.—It has been decided in the *Province of Bihar v. Ms. Jokhi Ram, Ram Prashad. Miscellaneous Judicial Case No. 127 of 1947* by the Bench, which held that there was no power to grant costs under the Bihar Sales Tax Act except the power vested in the High Court by S. 35(6) of the Act of 1947 which corresponds to S. 21 (6) of the Act of 1944. Reference may also be made to *Bhagwan Das v. Province of Bihar* ('49) 28 Pat. 823.

Jurisdiction of High Court is of an exceptional nature and is limited by the express terms of section that the High Court is incision of only such question of law as has been duly raised in the statement of the case *Doma Sahu Kishun Lal v. State of Bihar*.

Statement of Case :—(1) The statement of case should contain all the relevant facts, whether admitted or proved. The reference should be clearly stated. All relevant documents should be annexed. It is not sufficient merely to raise a general point of law. The findings of facts should be definite and adequate *C. I. T. v. Ahmedabad New Cotton Mills Co.* 1928 Bom. 510. (2) There should be no mis-statements, *C. I. T. v. Remington Typewriting Co. Ltd.* 1928 Bom. 465, (470). (3) The question of Law on which the Court's opinion is sought must be stated towards the end. *C. I. T. v. Maharaja of Dharbhanga* 1933 P.C. 108, *Gopi Ram Govind Ram* 1938 Cal. 20. (4) Question of law should not be raised in an abstract form, discovered from facts. *Raghunandan Parsad Sinha (Raja) v. C. I. T.* 1933 P. C. 101, 1933 I.T.R. 113; *C. S. Desai* : 1937, I.T.R. : *Punjab Co-operative Bank v. C.I.T.* 1939, Lah. 852.

In *Gopiram Govindram*, 1936 I.T.R., it is held that a statement of a case ought to be drawn up in such a form as to state with precision and in a condensed form (the usual and most convenient practice is to do so in numbered paragraph) all the facts and proceedings in chronological order which have led to the question of law arising. The statement of facts ought to be framed in such a form as whilst stating completely and impartially statement of facts has given birth. To use a colloquial illustration, the statement should conclude by framing in the most clear and concise language the exact question of law and the section under which it arises.

Judgment :—The High Court shall, in deciding a reference, deliver a judgment. This judgment, however, is not a judgment in the strictly in legal and proper sense, not being an exhaustive document directing something to be done or not to be done *Tata Iron & Steel Co. Ltd.* 1 I. T. C. 206 ; 1923 P. C. 148. It shall, however, contain the grounds on which it is based. No appeal lies to Federal Court against the judgment of High Court.....A. I. R. 1951 S. C. 14.

"Dispose of the case accordingly" High Court shall send to the Board of Revenue a copy of such judgment, and the Board shall dispose of the case accordingly. It is the duty of Board of Revenue or Tribunal to see that the High Court's orders are carried out. Where the assessment figures require alteration this shall be done in the presence of the assessee. *Secretary of State v. Basant Rai* 1932 All. 317. If the Board of Revenue fails to carry out the High Court order a mandamus can issue. *C.I.T. v. Bombay Trusts Corporation* 1936. P.C. 269 ; *Tata Iron & Steel Co. Ltd.* 1933 P. C. 148.

Retention of Refund amount :—It would be illegal to withhold payment of the amount due to be refunded to the assessee as a consequence of the High Court's order on reference, with a view to set off the refund against any future assessment. *C. I. T. v. Bombay Trust Corporation* 1936, I. T. R. 323.

"The costs" shall be in the discretion of the Court :—The question as to cost should in all cases be decided at the hearing before the final order is drawn up. *Ramgopal v. C.I.T.* 1926 All. 403; 1. I.T.O. 403.

"Order" of High Court.....if appealable :—Order of the High Court is appealable only when firstly, order under appeal is a final order, and secondly, that it was passed in the exercise of the original or appellate jurisdiction of the High Court. Order of refusal by High Court to call upon Board of Revenue for reference is not appealable. It is held that order appealed against in High Court cannot be regarded a final order because it does not of its own force bind or affect the rights of the parties. The crux of the matter therefore is that the jurisdiction of the High Court was only consultive and was neither original nor appellate. In view of these facts, the order of refusal by High Court to call upon the Board of Revenue for reference is not appealable. *A. I. R.* 1951 S. C. 14.....Appellant v. *The State of Bihar*.

High Court—Jurisdiction of :—The jurisdiction conferred upon the High Court by S. 21 of Bengal Finance (Sales Tax) Act is a special jurisdiction and forms no part of the Court's original or Appellate Jurisdiction. *India Ice & Cold Storage Co. Ltd. v. Member, Board of Revenue, West Bengal* 53 C. W. N. 191. Also see *Y. D.* Vol. 49, Page 65.

An application for statement of case to the High Court under S. 21 of the Bengal Finance (Sales Tax) Act, need not be moved on the Appellate side to whom the Chief Justice has assigned the matter in the 'High Court' and it is for him to hear the application and to order the statement of the case as contemplated by section 21 (3) of the Act : *India Ice & Cold Storage Co., Ltd. v. Member, Board of Revenue, W. Bengal.* 53 C. W. N. 191.

RULES

Power to make rules.—The State Government or the competent authority is authorised under the Sales-tax Act to make rules, subject to the condition of previous publication, for carrying out the purposes of the Act.

In particular and without prejudice to the generality of the foregoing power such rules may prescribe—

- (1) proportion of cost of labour to the cost of material used in carrying out any contract,
- (2) manner of determining turnover,
- (3) designation of sales-tax officers,
- (4) further period after the date of three consecutive years for being liable to tax under the provisions of law,
- (5) the circumstances and conditions under which taxes may be compounded and the manner of fixing fees on such composition,
- (6) the conditions subject to which goods or classes of goods may be notified as tax free,
- (7) the restrictions and conditions subject to which any class of dealers may be exempted from payment of tax,
- (8) the points in the series of sales by successive dealers at which any goods or class of goods may be taxed or exempted from taxation,
- (9) the procedure for and other matters incidental to the registration of dealers and the granting of certificates of registration and the form of such certificates and the date from which cancellation of registration shall take effect,
- (10) the manner in which the list and particulars of the registered dealers are to be published,
- (11) the returns to be furnished and dates by which and the authority to which such returns are to be furnished,
- (12) the date by which returns for any period are to be furnished and the procedure to be followed for assessments,
- (13) the intervals at which and the manner in which the tax shall be payable,
- (14) the restrictions and conditions subject to which a registered dealer may collect tax,
- (15) the manner in which refunds shall be made,
- (16) the cash memoranda, books of accounts and forms thereof and the manner in which those shall be maintained,
- (17) the conditions under which production of accounts or documents or furnishing of information may be required at inspection,

- (18) the authority to which and the time within which information regarding change in business to be furnished,
- (19) the manner in which and the authority to which appeals against assessments or penalty or both may be preferred,
- (20) the procedure for and other matters including fees incidental to the making of application, furnishing of information and service of notice under Sales-tax Act,
- (21) the procedure for and other matters including fees incidental to the disposal of appeals and applications for revision and review,
- (22) qualifications to be possessed by a member of the Tribunal,
- (23) the conditions and restrictions subject to which general tax on bullion and specie is to be levied,
- (24) the manner and form of licence and the conditions subject to which licence is granted,
- (25) Sacred books to be exempted from tax.

Power to make breaches of the rules punishable.—The State Government is authorised under Sales-tax Act to direct that a breach of the rules shall be punishable and when the offence is continuing one, what daily fine shall be recovered during continuance of an offence.

Amendment of rules cannot have retrospective effect.—Where amendment of rules was made during the pendency of prosecution against the assessee which made an omission to make a return an offence and consequently the assessee whose prosecution could not stand owing to the fact that the assessee was not required under before the amendment to make a return, was convicted, it was held that amendment of rules could not create an offence retrospectively and the conviction could not stand. 1942 A.I.R. Mad. 736.

Breach of rule cannot make non-taxable goods taxable.—Breach of rule will no doubt make a dealer liable to pay any penalty prescribed by the Government but it will not make and cannot make non-taxable goods taxable. In case a rule makes non-taxable goods taxable it is *ultra vires* and it is right only in so far as it is a rule for carrying out the purposes of Sales-tax Act.

Rules 17 and 18 and Section 31 equivalent to Rule 36 and S. 26 of Bihar Sales Tax Act of 1944. *Held* that Rule 35 (1) is a mere rule of evidence specifying the nature of the evidence which the Commissioner will require under Section 10(2) in support of a plea that any portion of the gross turnover represents sales on non-taxable goods. Breach of the rule will no doubt make the dealer liable to any penalty prescribed by the Government S. 26(3). It will not and cannot make non-taxable goods taxable, it is for the dealer to show that any portion of his gross turnover represents sales of non-taxable goods, and unless and until he does so, the assessing officer is surely open to the Government to specify under 36 the kind of evidence which should be produced in support of such a plea. It would be impracticable in the case of a large dealer for the Sales-tax Officer to examine individually vast number of cash memos to pick out those items which might relate to taxable goods from those relating to non-taxable goods.

Rule 36 is evidently made under Section 26(2) (q) and in so far as it is a rule for carrying out the purpose of the Act, it is all right. If however, it purports to make non-taxable goods taxable, it is *ultra vires*. *Province of Bihar v. Jokhi Ram, Ram Prasad. Miscellaneous Judicial Case No. 127 of 1947.*

Burden to prove that goods are non-taxable is on the dealer.—It is the dealer who has to show that any portion of his gross turnover represents sales of non-taxable goods as it would otherwise be impracticable in the case of a large dealer for the Sales-tax Officer, to examine individually vast number of cash memos to pick out those items which might relate to taxable goods from those relating to non-taxable ones. *Province of Bihar v. Joghiram Ramprasad.*

Rule not *ultra vires*.—Rule 36 of Bihar Sales tax rules is not *ultra vires* as the rule prescribes what record the dealer has to maintain and produce as evidence to support a certain claim. It does not preclude the production of other evidence to prove the claim. *Pralab Kamli v. The Province of Bihar.*

Record not to be excluded merely because it does not strictly conform with the rule.—If the record in any particular respect is not in strict accordance with the rule, that fact alone should not be taken as sufficient ground to exclude it, because the whole Sales-tax business is new and assesseees are not quite familiar with all the technicalities of the Sales-tax law. 12 B.R. 561.

Rules subordinate and enactments leading provisions.—The enactment itself is to be treated as governing consideration and the rule as subordinate to it. So in case of conflict between a rule and a provision of the Act, the conflict is to be reconciled as best one can and if that is not possible the leading and subordinate provisions are to be determined. Where a scheme is framed by rules, even though they may have statutory authority if any part of the scheme conflicts with an express provision of the Act, the rule will have to be disregarded 1937 I. T.R. 345.

In the case of Institute of Patent v. Joseph Lockwood (1894 A. C. 347), Lord Herschell, L. C., who in his speech in the House of Lords as appearing in page 360, said :

“No doubt there might be conflict between a rule and a provision of the Act well, there is a conflict sometimes between two sections to be found in the same You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it.”

It follows from this that where a scheme is framed by rules even though they may have statutory authority, if any part of the scheme conflicts with an express provision of the Act, the rule will have to be disregarded : *Banke Behari Lal v. Commissioner of Income Tax, Punjab, I. T. R. 1937, 345.*



SUBJECT INDEX

| | Pages. |
|---|-----------|
| Accounts & Inspection | |
| —Keeping and preservation of accounts | ... 113 |
| —Where accounts are not clear, prescribed form is to be complied with | ... 113 |
| —Power of tax officer to order production of accounts | ... 113 |
| —Tax officer can carry on inspection of dealer's shop | ... 113 |
| —Tax officer can seize accounts documents | ... 113 |
| —Tax officer can search the premises | ... 113 |
| —Inspection on holiday or lunch hour illegal | ... 113 |
| —Demanding of cash and private papers unlawful | ... 113 |
| —Tax officer cannot prepare an incriminatory statements of dealer and get it signed | ... 114 |
| Appeals, Revision & Reference | ... 147 |
| Assessments | |
| —Assessment on submission of return | ... 89 |
| —Notice necessary when return incomplete or incorrect | ... 89 |
| —Notice— Issue of notice mandatory on unaccepted return | ... 90 |
| —Waiver | ... 90 |
| —Evidence— meaning of | ... 90 |
| —Onus | ... 90 |
| —Non-compliance with notice and best judgment Assessment | ... 90 |
| —Best judgment Assessment | ... 91 |
| —Jurisdiction of High Court in best judgment assessment | ... 91 |
| —Assessment of minor and reconstituted firms | ... 92 |
| —Assessment and penalty for failure of registration | ... 92 |
| —Cancellation of assessments | ... 92 |
| —Rectification of assessment | ... 92 |
| —Limitation for assessments | ... 93 |
| —Turnover escaping assessment | ... 93 |
| —Licence fee etc. escaping assessment | ... 93 |
| —Assessment not to be questioned in prosecutions | ... 93 |
| —Validity of Assessment | ... 93 |
| —Assessment—proof of | ... 93 |
| —Suit not competent to set aside or modify assessment | ... 93 |
| —Assessment no bar to penalties and prosecutions | ... 93 |
| —Election of assessment year & method of assessment | ... 93 |
| —Assessment of Tax under Sales Tax Acts of Assam, Bengal (West), Bihar, Bombay, C.P & Berar, Delhi, East Punjab, Madhya Bharat, Madras, Mysore, Orissa, Saurashtra, United States of Travancore & Cochin and U.P. | 94 to 110 |
| —Illegality of Assessment | ... 96 |
| —Issue of notice under S. 13 (2) (a) of Bihar Sales Tax Act mandatory | ... 96 |
| —Letter or telegram not a notice | ... 97 |
| —Any evidence i.e., in support of the return | ... 97 |
| —Reasonable opportunity | ... 97 |
| —Such other evidence | ... 97 |
| —Non-genuine account books—Best judgment assessment | ... 97 |

| | | |
|--|-----------|-----|
| — Issue of notice under S. 11 (2) (a) of Bombay Sales Tax Act 1946 | ... | 99 |
| — Best judgment assessment | ... | 99 |
| — A check on taxing authorities | ... | 99 |
| — Notice calling for return | ... | 100 |
| — Omission or wrong statement in a return | ... | 100 |
| — Onus of proof | ... | 106 |
| — Best judgment Assessment | ... | 110 |
| Composition of offences | ... | 123 |
| — Compounding of offences | ... | 123 |
| — Compoundable & non-compoundable offence | ... | 123 |
| — Wilful untrue return is compoundable offence | ... | 123 |
| — False evidence to support return is non-compoundable offence... | ... | 123 |
| — Production of forged documents on officer's order is not evidence under S. 196 of Penal Code | ... | 124 |
| — Intention of legislature with regard to composition of offences | ... | 124 |
| Contract Act | ... | 37 |
| Definitions | ... | 11 |
| — Dealer—who is dealer | ... | 11 |
| — Sale—meaning of | ... | 11 |
| — Ingredients of sale | ... | 12 |
| — Sale | ... | 12 |
| — Location of the place where sale takes place | ... | 12 |
| — Transactions not sales | ... | 13 |
| — Machinery provided by the Act | ... | 13 |
| — Definitions of Sales under Sales-tax Acts of Assam, Bengal (west), Bihar, Delhi, Bombay, Hyderabad, Madhya Pradesh, Vindhya Pradesh, Madhya Bharat, Madras, Manipur, Mysore, Orissa, Patiala and East Punjab States Union, East Punjab, Uttar Pradesh, United States of Travancore and Cochin. | 13 to 20. | |
| — Sale price—meaning of | ... | 20 |
| — Sales tax not included in sale price | ... | 20 |
| — Determination of sale price when consideration other than money | ... | 20 |
| — Goods—what goods are | ... | 20 |
| Duties of a dealer | ... | 65 |
| — Declaration nominating manager | ... | 65 |
| — Information to be given on disposal or discontinuance | ... | 65 |
| — No collections of tax to be made except in accordance with law | ... | 66 |
| Exemptions | ... | 115 |
| — Schedules of Exempted goods | ... | 115 |
| — General Exemptions | ... | 115 |
| — Handloom cloth taxable when subjected to needle work | ... | 115 |
| — Tobacco does not mean 'hooka tobacco' only | ... | 115 |
| — Salt and not gunny bags are exempt—interpretation of Statute... | ... | 115 |
| — Cooked food does not include tea and coffee | ... | 116 |
| — Ready-to-wear garments of khadi exempt | ... | 116 |
| — Agents Exemption of | ... | 116 |
| — Sale of used goods—Exemption of | ... | 116 |
| — Sacred books exempted from tax | ... | 116 |
| — Sales effected with institutions exempted | ... | 117 |

SUBJECT INDEX

163

| | Pages |
|---|----------|
| Gross and Net turnover and Taxable turnover | ... |
| —Definition of turnover | 66 |
| —Determination of gross turnover | 66 |
| —In actual practice—turnover referred to as gross turnover | 67 |
| —Forward contracts to be taxed on prescribed rates | 67 |
| —Determination of net turnover | 67 |
| —Licence fee not to be deducted | 67 |
| —Permissible deductions to be proved by relevant documents | 67 |
| —Deductions | 68 |
| —Calculation of taxable turnover | 68 |
| —Non compliance with rules can not make non taxable goods taxable | 68 |
| —Exemption on tax free goods allowable even though cash memos not issued | 68 |
| —Subject not to be taxed without clear words | 68 |
| —Judgment to be exercised where rules not strictly complied with | 68 |
| <i>Single point taxation</i> | 69 |
| Incidence of Taxation | ... |
| —Incidence of taxation under Sales-tax Acts of Assam, West Bengal, Bihar, Bombay, Delhi, Madhya Bharat, Madhya Pradesh, Vindhya Pradesh, Madras, Mysore, Orissa, E. Punjab, Saurashtra, Uttar Pradesh, United States of Travancore & Cochin | 69 to 87 |
| —turnover | 71 |
| —Gross turnover | 71 |
| —Taxable quantum | 71 |
| —Taxable turnover | 71 |
| Indian Sales of Goods Act, 1930 | 21 |
| Introduction | 1 |
| —History of Sales-tax in India | 1 |
| —Taxation Scheme in general | 3 |
| —Machinery to work out the Scheme | 3 |
| —Registration of dealer | 4 |
| —Return and Accounts | 4 |
| —Best judgment Assessment | 4 |
| —Other sanctions | 4 |
| —Security to the Assessee | 5 |
| —Remedies open to the assessee | 5 |
| —Other provisions for the working (of Acts) | 7 |
| —Exemptions, Deductions and Reductions | 7 |
| —Recovery of tax | 8 |
| —Government empowered to make rules | 8 |
| —Extent of powers of State Legislatures | 8 |
| Issue of writs | 125 |
| —Nature of writs | 125 |
| —Attack on basic principles of assessment, writ can issue | 125 |
| —Writ can issue when conduct of authorities warrants it | 125 |
| —Writ refused on the ground that other remedies were available | 125 |
| —High court's jurisdiction under Government of India Act... | 125 |
| Liability to pay tax | 65 |
| Manager and agent also liable to pay tax | 65 |
| Legal representative liable when dealer dies | 65 |

| | Page |
|---|------|
| —Joint liability of transfer and transferee | 65 |
| —Liability of guardian and trustee | 65 |
| —Liability of Official Receiver etc. | 65 |
| —Liability on dissolution of firms and Association of persons | 65 |
| Miscellaneous Provisions | 145 |
| Penalties and Prosecutions | 119 |
| —Offences | 119 |
| —Prosecutions | 120 |
| —Extraction of more money by abuse of powers of composition | 120 |
| —Fine on proof of continuing offence | 120 |
| —Penalty once imposed cannot be reimposed | 120 |
| —Offences compoundable | 121 |
| —Offences are bailable | 121 |
| —Accused cannot be charged again when offence compounded | 121 |
| —Punishment for offences | 121 |
| —Nature of the proceedings | 121 |
| —Validity of assessment cannot be questioned | 121 |
| —Prosecution to prove fact of assessment and service of demand notice | 122 |
| —Burden shifts to the accused | 122 |
| —Reasonable cause a good defence | 122 |
| Powers of Tax Officer | 111 |
| —Tax officer can determine disputes | 111 |
| —Tax officer can summon persons and take evidence | 111 |
| —Proceedings before tax officer are deemed judicial proceedings | 111 |
| —Duty of Tax Officer | 111 |
| —Tax officer is not a court | 112 |
| —Tax officer a public servant | 112 |
| —Public servant—meaning | 112 |
| Power to take evidence on oath | 127 |
| Registration | 87 |
| —Compulsory registration | 87 |
| —Voluntary registration | 87 |
| —Registration certificate not to cover all businesses | 87 |
| —Dispensing chemist dealing in patent medicines to apply for registration | 88 |
| —Registration not necessary for imported goods when negligible... | 88 |
| —Dealer to pay tax on un-sold stock when Registration cancelled | 88 |
| —Certificate of Registration | 88 |
| Returns & Payment of tax | 88 |
| —Returns to be furnished by registered dealer | 88 |
| —Tax to be paid according to the return submitted | 88 |
| —Tax to be paid in prescribed manner and at specified intervals | 89 |
| —Revised returns on detection of error or omission | 89 |
| —Payment of tax without reasonable cause makes a dealer liable to penalty | 89 |
| —Competent authority can extend time and allow payment by installments | 89 |
| —Tax unpaid recoverable as arrears of land revenue | 89 |
| —Notice on one partner of a firm another not liable | 89 |
| Returns Privileged Documents | 143 |
| Rules | 157 |

Printed at Law Printing Press, Delhi.

